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ABSTRACT

This thesis discusses the evolution, development, and future of affirmative action in government. Executive Order 11246 formally created affirmative action in 1965 as a remedy for underuse of minorities and women in the workplace and classroom. Many private businesses believe government organizations promote diversity and social equity. Many local government organizations attempt to balance the demographics of senior minority leaders with the demographics of the employment population, and the demographics of the employment population with the demographics of the community. This may be difficult, since many individuals promoted to middle managers and senior executives have longevity within the organization. Consequently, the perception is that some organizations establish glass ceilings, quotas, or goals, and use inappropriate practices to reach these goals. This strategy has led many to believe that affirmative action promotes hiring individuals on the basis of their race, color, creed, gender, or national origin without regard to their qualifications. Some argue there is no longer a need for affirmative action, but an analysis of middle managers and senior executives within government organizations may show a disparity of minorities and women in leadership positions. The personnel manager has the challenge of trying to satisfy the needs of affirmative action programs while hiring the most qualified applicant for the job. Several court cases have established some precedence on the rulings involving affirmative action. Court rulings identified some of the shortcomings with affirmative action in private businesses and government. In retrospect, the future of affirmative action is uncertain. Political issues and court decisions challenge government officials to continue promoting social equality and workforce diversity. If a nation free of prejudice and inequality can be established, there will no longer be a need for affirmative action. Contains a 37-item bibliography. (Author/BT)

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GRADUATE SCHOOL

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THE EVOLUTION, DEVELOPMENT AND FUTURE OF AFFIRMATIVE ACTION

IN GOVERNMENT

by

James Edward Davis

A thesis presented to the
Graduate School of Webster University in
partial fulfillment of the
requirements for the degree
of Master of Arts

March, 1998

Saint Louis, Missouri

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This thesis discusses the evolution, development and future of affirmative action in government. Executive Order 11246 formally created affirmative action in 1965 as a remedy for underuse of minorities and women in the workplace and classroom. Government organizations have been the epitome for promoting workforce diversity. Ideally, many private businesses believe government organizations promote both diversity and social equity. Many local government organizations attempt to balance the demographics of senior minority leaders with the demographics of the employment population, and the demographics of the employment population with the demographics of the community respectively. However, this is may be difficult since many of the individuals promoted to middle managers and senior executives have longevity within the organization.

Consequently, the perception is that some organizations establish glass ceiling, quotas or goals and use inappropriate practices to reach these goals. This strategy has led many to believe that affirmative action promotes hiring individuals on the basis of the race, color, creed, gender or national origin without regard to their qualifications. This is the most common misinterpretation of affirmative action from the general public.

Some argue that there is no longer a need for affirmative action in the 90s due to the diversity found in the workforce today, particularly in government organizations. However, an analysis of middle managers and senior executives within government organizations may depict a disparity of minorities and women in leadership positions. The personnel manager has the challenge of trying to satisfy both the needs of affirmative action programs while hiring the most qualified applicant for the job. Several court cases have established some precedence on the ruling involving affirmative action. The court rulings identified some of the shortcomings with affirmative action in both private businesses and government.

In retrospect, the future of affirmative action is uncertain. Political issues and court decisions challenge government officials to continue promoting social equality and workforce diversity. If we can establish a nation free of prejudice and inequality, we will no longer have a need for affirmative action.

THE EVOLUTION, DEVELOPMENT AND FUTURE OF AFFIRMATIVE ACTION IN GOVERNMENT

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PART I

INTRODUCTION

CHAPTER 1 HISTORY

"Use power to help people. For we are given power not to advance our own purposes nor to make a great show in the world, nor a name. There is but one just use of power and it is to serve people." George Bush (Maxwell 1994)

The term "affirmative action" appears in two places in American law. First, we find it in the Civil Rights Act of 1964, Title VII, dealing with discrimination in employment: "If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practices...the court may... order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay...or any other equitable relief as the court deems appropriate." This applies to all employers of more than fifteen persons. Secondly, it appears in Executive Order 11246, imposing "affirmative action" in employment and promotion on all federal contractors if they receive federal contracts.

Executive Order 11246 formally created affirmative action in 1965. The executive order requires that employers with federal contracts worth more than \$10,000 must have written affirmative action plans.

There is no similar requirement, whether in the Civil Rights Act or elsewhere, for "affirmative action" in education. Yet the term is applied to the practices of colleges, universities, and professional schools attempting to increase minority enrollment. (Glazer 1987)

Evolution of Affirmative Action

Kathanne W. Greene states that the term "affirmative action" originated in a bill presented to the House of Representatives in 1950, which required that employers not discriminate and that they take "affirmative action" to provide back pay and reinstatement to those who had been discriminated against.

On May 6, 1960, President Eisenhower signed into law a new civil rights statute. It was a simple ceremony. Only two other persons were present. Attorney General William P. Rogers and his Deputy, Lawrence F. Walsh. The statement that the President released for the occasion was prosaic and of scant news value. (Berman 1966)

By 1963, civil rights was not only on the public agenda but the congressional agenda as well. Both the public and Congress had come to believe that the federal government should and legitimately could act on civil rights. In 1963, several hundred civil rights bills had been introduced in Congress. The next step was formulation of the policy.

In early 1963, President Kennedy presented a mild civil rights bill to Congress which was intended to broaden existing protections of black voting rights and extend the life of the U.S. Commission on Civil Rights. However, after the events in Birmingham and the March on Washington, President Kennedy began to feel pressure to present stronger legislation. In June, he sent a message to Congress calling for legislation that guaranteed voting rights, equal access to public accommodations, equality in employment practices, nondiscrimination in federally assisted programs, and authority for the Justice Department to file suit in desegregation cases.

In his message to Congress, Kennedy stressed the importance of the link between social and political rights and liberties and the economic distress of blacks: "Employment

opportunities play a major role in determining whether the voting rights, access to public accommodations and facilities are meaningful. There is little value in a Negro's obtaining the right to be admitted to hotels and restaurants if he has no cash in his pocket and no job." First, he called for the creation of new jobs for blacks and other poor citizens through greater economic growth. Kennedy also called for more education and training programs to raise the level of skills among blacks, and finally for the elimination of discrimination in employment. In his message to Congress, Kennedy repeatedly stressed these areas where progress was necessary to relieve black unemployment: (1) job creation through economic growth, (2) increased education and training to raise the level of skills, and (3) the elimination of racial discrimination in employment.

In his first priority, Kennedy placed the need for more education and training to increase the skill levels of blacks. In his message, he requested more federal funding for all levels of education, from grade school to graduate school, and the enactment of several measures that would provide an expansion of job training and experience programs.

Following Kennedy's message to Congress, the proposed legislation was sent to the House of Representatives where it was introduced by Emanuel Celler (D-NY), given the label HR7152, and sent to the House Judiciary Committee. Celler, who was chairman of the Judiciary Committee, assigned HR7152 to Subcommittee No. 5, which he also chaired, and hearing began later.

At Kennedy's request, the hearing in the Judiciary subcommittee was extended in an effort to get the tax reform bill onto the floor of the House. In September 1963, the subcommittee began the mark-up of the bill. On October 2, Celler called for a voice vote

on HR7152 and then announced that the revised bill would be reported favorably to the full Judiciary Committee. The bill was accepted by the committee and recommended for passage in House report No. 914.

The comments on Title VII began with a table showing the unemployment rates of 1963 by color, age, sex, and occupational grouping. The table showed that blacks suffered from an unemployment rate twice that of whites. It also showed that black employment was concentrated in semiskilled and unskilled jobs. Also included was a table indicating the "unbalanced occupational distribution".

The text of Title VII included additional viewpoints which stressed the need to eliminate maldistribution:

National prosperity will be increased through the proper training of Negroes for more skilled employment together with the removal of barriers for obtaining such employment. Through toleration of discriminatory practices, American industry is not obtaining the quality of skilled workers it needs. With ten percent of the workforce under the bonds of racial inequality, this stands to reason....This country is not making satisfactory use of its manpower. Consider how our shortage of engineers, scientists, doctors, plumbers, carpenters, technicians, and the myriad of other skilled occupations could be overcome in due time if we eliminate job discrimination.

These passages indicated again that the advocates of Title VII believed that fair employment involved more simple nondiscrimination in employment but also required

positive action to bring blacks into all employment categories, including skilled, white-collar, and professional occupations. (Greene 1989)

Title VII of the Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 is the most comprehensive statute on civil rights ever enacted in the United States, banning discrimination in employment, voting, public accommodations, public education, and all federally assisted programs. (Carlton)

Affirmative action as defined today was not articulated as a policy until President Lyndon Johnson issued Executive Order 11246, which required that federal contractors take affirmative action to ensure the hiring of qualified minorities and women in their work force. Most challenges to affirmative action have been brought by public employers either under the Equal Protection Clause of the Fourteenth Amendment, Title VII of the Civil Rights Act of 1964, or both. The Supreme Court cases that are the main focus of this work have generally been challenges brought under Title VII of the Civil Rights Act of 1964, as amended, and the legal debate over affirmative action arises from the Court's interpretation of this title. With regard to affirmative action, section 706(g) of Title VII states only that after a finding of discrimination a court may order an employer "to take such affirmative action as may be appropriate." The section as it was originally written goes on to state that such action "may include, but is not limited to reinstatement of hiring employees, with or without back pay." In 1972, this section was amended to include the phrase "or any other equitable relief as the court deems appropriate." This definition is somewhat unclear as to whether it includes affirmative action as it is defined in the Uniform Guidelines on Employee Selection Procedures or if it applies only to court-ordered affirmative action. This section does not address the additional questions of

whether Title VII permits voluntary affirmative action or affirmative action undertaken in compliance with a consent decree. Thus the Supreme Court has made the determination to accept affirmative action is acceptable under the prohibitions and requirements of the statute.

Statutory interpretation is one of the primary functions of the Supreme Court. When Congress passes legislation, especially comprehensive and controversial legislation such as the Civil Rights Act, Congress is often unable or unwilling to address all the possible issues and problems that will arise when the statute is implemented. This may be a function of the complexity of the issues being addressed or it may result from the need to negotiate and compromise in order to satisfy the various interests in Congress needed to pass the legislation. The responsibility for filling in the gaps not addressed in the resulting statute is that of the federal courts and ultimately the Supreme Court.

Affirmative action has been debated by scholars, politicians, practitioners, and laypersons since its inception in the 1960s, and over 30 years later it is still being debated. Much of the debate regarding affirmative action centers on Title VII of the Civil Rights Act of 1964. The question remains is Title VII limited to providing compensation to the identified victims of discrimination, or does it permit an effort such as affirmative action, which works toward a more just distribution of minorities and women throughout the work force? (Greene 1989)

Scholars who have sought to justify or condemn affirmative action in terms of principles of justice have not done so in a vacuum. Their justifications developed the framework for the legal debate. The Supreme Court must interpret Title VII when applying it to specific cases and this process of interpretation requires a search for the

underlying principle(s) behind the statute. This is done through an application of statutory interpretation: theories of legislation. These theories, which may involve a search for legislative intent or a search for coherence, guide justices in the interpretation of statutes by identifying the legal rights and duties that Congress established when it enacted the legislation. Theories of intent interpret the law through an examination of words of the statute and/or the legislative history of law as found in the committee hearings, reports, and congressional debates. The coherence theory interprets the law in terms of political justification of statute. In either case, the Court must determine whether Title VII is based on compensatory or distributive justice before it can apply the facts of the case.

Equally important to the Court's interpretation of Title VII with respect to affirmative action is its own early employment discrimination cases. Congress did not define discrimination, but left the task to the Court. Thus these early interpretations of the statute that defined discrimination will shape the Court's later interpretation of it in relation to affirmative action. These early interpretations can not stand alone, however. They must be viewed in the context of amendments that were subsequently made to Title VII by Congress. Thus the legal debate surrounding affirmative action is not the simple application of a law to different sets of facts. Instead, it also involves accounting for political reactions to these decisions in later applications.

Preferential Treatment

Brian Lewis believes that continuing with a system of neutral principles in a society already slanted significantly toward one group is, itself, unethical and immoral. He uses an anecdotal example similar to the one used by Lyndon B. Johnson to justify affirmative action programs. Suppose that a track official is judging two athletes running a hundred

yard dash. Before the official shoots off the starting pistol, one runner kicks the other in the shin, stomps on his toes, and then runs ahead fifty yards. Now because our official is observant, he sees this dirty play and immediately halts the race. So he walks over to the runner, who is fifty yards ahead and tells him that what he did was unfair and wrong and he is forbidden from doing it again. Then he goes back to check on the runner at the starting line. The runner is a little bruised up. The official tells him "Don't worry I saw everything that happened. I told the other runner that what he did was wrong and that he should not have done it. As I speak the rules are being changed to outlaw such actions from ever happening again." Then the official strolls back to his position and fires the starting pistol to begin the race, where the runners left off.

What is called "affirmative action" in the United States is part of a much larger phenomenon found in many countries around the world: government-designated groups. The nature of these policies and these groups vary across a wide spectrum. Nevertheless, there are similarities in these policies, as well as differences. Both the similarities and the differences must be considered if the phenomenon is to be understood. Indeed in centuries past, preferential policies toward one group or another have been so pervasive that it is the idea of treating individuals alike which is historically recent and unusual.

In Roman times, no one would have expected a Roman citizen to be treated the same as a foreigner, or a senator to be treated the same as a plebeian or slave. Such an idea would have been considered at least as strange during the great Chinese dynasties or in the Ottoman Empire, or among the indigenous people of the western hemisphere. However, recently the idea of equal treatment of all has taken hold in the fundamental thinking and fundamental political structure of countries as different as India and the

United States, both of whose constitutions have a fourteenth amendment requiring equal treatment. It is the resurgence of official group preference in the wake of such commitments to equal treatment of individuals which has been striking and controversial. One sign of the potency of the idea of equal treatment of individuals has been that, in various countries around the world, preferential policies have been characterized as "temporary" by their advocates, however long they may later turn out to last in practice.

Preferential policies are *government*-mandated preferences for *government*-designated groups. The spontaneous preferences of particular individuals and groups for "their own kind" is an important social phenomenon in itself. Some preferential policies are intended to offset these spontaneous social preferences, but some--the Jim Crow system of racial discrimination, for example--were intended to reinforce existing racial preferences. (Sowell 1990)

Preferential policies as defined here, are policies which legally mandate that individuals not all be judged by the same criteria or subjected to the same procedures when they originate in groups differentiated by government into preferred and non-preferred groups. This operational definition is used in order to investigate the actual consequences of such procedures, regardless of their rationales or hopes, and regardless of whether they are called by such general names as "affirmative action," "compensatory preferences," "discrimination," "reverse discrimination," or by a variety of more specific terms in particular countries. (Sowell 1990)

The key issue in affirmative action programs and reverse discrimination is whether minorities and women deserve some kind of preferential treatment to compensate them for past wrongs or to promote certain social goals such as reducing social injustice.

Regarding the issue of compensation, supporters of preferential treatment argue that since we think veterans are owed preferential treatment because of their service and sacrifice to the country, we may similarly think minorities and women are owed preferential treatment because of their economic sacrifices, systematic incapacitation, and consequent personal and collective losses. Under preferential treatment, no person is asked to give up a job that is already theirs.

Opponents argue that preferential treatment violates the requirements of compensatory injustice by requiring that compensation should come from all the members of a group that contain some wrongdoers and requiring that compensation should go to all the members of a group that contain some injured parties. Only the specific individuals who discriminated against minorities and women in the past should be forced to make reparation of some sort, and they should make reparation only to those specific individuals against whom they discriminated. (Buchholz 1992)

Professor Abraham Edel takes the problem to be investigated as being "how to increase participation of women and racial minorities in education and business in ways compatible with our conception of justice." He holds that the problem can be more profitably discussed in terms of preferential consideration than in those of compensatory justice or of reverse discrimination. The concept of compensatory justice sets an overly narrow framework within which to examine the problem. He holds the problem to be investigated which is how to apportion, by preferential consideration, to women and racial minority members the goods as well as the burdens of education and business in a just way. Plainly, Edel sees the problem as one of distributive justice.

To find and formulate the grounds of preferential consideration in a given area of activity, Edel points out, one must specify the standards relevant to the area, explore these criteria in the light of "underlying aims," understand the complex conditions under which the involved selection is being made, and predict the consequences of action along the lines of the given standards *vis-à-vis* the given underlying aims and the given conditions. To assure that the grounds of a preferential consideration are just, one should ponder the questions about these criteria, underlying aims, and consequences which are posed by the individual rights and the collective welfare models of justice. Hence, when a person is to make a preferential consideration in education or business, they might well start with the relevant standards of merit and ability. Edel argues, when a person considers these criteria as indicated above, he will find that they alone cannot provide a basis for just decisions in, say, hiring employees or admitting students. (Blackstone 1977)

Summary

The evolution of affirmative action has significantly created a more diverse job market while increasing employment opportunities for minorities and women in the United States. Title VII of the 1964 Civil Rights Act formally mandated all discrimination practices. Title VII further declared that persons subject to discrimination through employment may take affirmative action to obtain their entitlements to include back pay. Executive Order 11246 clearly changed the direction of employment by requiring private and government organizations to comply with the federal law. The key issue in affirmative action is whether minorities and women deserve some type of preferential treatment or consideration to compensate for events that occurred in the past or promote social equity thus reducing social injustices.

CHAPTER 2

ISSUES INVOLVING AFFIRMATIVE ACTION

"The person who gets the most satisfactory results is not always the person with the most brilliant single mind, but rather the person who can best co-ordinate the brains and talents of his associates." W. Alton Jones (Maxwell 1994)

This chapter discusses issues that have an impact on affirmative action in government organizations. I will discuss the adverse impact and provide a method for calculating the demographics of employment population to determine if an adverse impact exists. Additionally, I will address the different types of affirmative action compliance and provide examples for monitoring affirmative in government organizations. Affirmative action appears to divide the politicians, community leaders, and businesses into two distinctive categories; those who support affirmative action; and those who oppose affirmative action. I will present some opinions supporting affirmative action and others opposing affirmative action. Finally, I will address some of the personnel challenges of affirmative action.

Adverse Impact

Under Title VII of the 1964 Civil Rights Act, an employer's hiring practices may be deemed as illegal when the company operates to the disadvantage of certain protected classes of individuals. While the employment practices may be neutral in appearance and intent, Wendover believes the company's hiring practices must reflect the characteristics of the surrounding community.

There is no clear definition of adverse impact purposed by the Equal Employment Opportunity Commission (EEOC). Instead they apply the "four fifths rule." This rule

states that an employer's selection rate for various protected groups must be at least 80% of the selection rate of the highest group. If the differential is greater than 20%, then the company's hiring practices are considered to have an adverse impact.

Calculation for Adverse Impact (the "4/5 rule")							
# of hires	White		Black		Hispanic		Adverse Impact?
	#	%	#	%	#	%	
32	12	100	10	83	10	83	NO
32	13	100	10	77	9	68	YES

Note: There is adverse impact in the second case because the number of Hispanics hired is 68% of the number of the group with the largest number of hires. Blacks represent 77% of the group with the largest number of hires. The number of Hispanics and Blacks hired would have to be at least 80% in each case for there not to be adverse impact. (11 Hispanics and 11 Blacks.)

If a company hires 32 employees in one year and 12 are Caucasian, 10 are Black and 10 Hispanic, there has been no adverse impact on those protected classes. If however, 13 Caucasians, 10 Blacks and 9 Hispanics are hired, the company would be considered to have an adverse impact on Hispanics because they represent only 68% of the number of Caucasians hired.

There are other variables entering into this equation such as ratios of existing employees within the organization and the population of certain protected classes within the surrounding community. As one can see, interpretation of this law can be exasperating. It is best to keep accurate records of hiring patterns no matter what your company's size.

In conjunction with the four fifths rule, the EEOC will also examine the placement of protected classes within the organization. If there is no representation of minorities in the management ranks, then the company's hiring practices will also be considered an adverse impact. (Wendover 1989)

Affirmative Action Compliance

Voluntary affirmative action compliance occurs when a public employer recognizes a compensatory need to diversify its work force and complies with affirmative action laws (and pursuant regulations issued by compliance agencies) through the preparation of an affirmative action plan that (1) identifies underutilization of qualified women and minorities compared to their presence in a relevant labor market, (2) establishes full utilization as a goal, (3) develops concrete plans for achieving full utilization, and (4) makes reasonable progress toward full utilization.

Involuntary affirmative action compliance occurs when a private employer or public agency alters its personnel practices as the result of investigation by a compliance agency that ends in a negotiated settlement, when the employer settles out of court with a compliance agency by means of a consent decree, or by court order. (Klingner 1993)

The Office of Federal Contract Compliance Programs (OFCCP), which is located in the Labor Department, is responsible for administration of Executive Order 11246.

If a company is found to be in violation of Title VII statues by the EEOC or courts, it may be required to establish an affirmative action plan to integrate its work force. This action may *require* the employer to hire applicants from protected classes, and to recruit them if insufficient numbers apply.

Employers working under federal contract rules have even more stringent requirements. Under Presidential Executive orders 11246 and 11375, all employers with more than \$50,000 in federal contracts and 50 or more employees are required to establish affirmative action plans regardless of whether they have been forced to do so because of adverse impact. The executive orders take precedence over Title VII legislation.

In addition, employers with more than \$10,000 in federal contracts are required to establish an affirmative action program for qualified Vietnam-era veterans under the Vietnam-era Veterans Adjustment Act of 1974. Failure to do so can result in loss of eligibility. (Wendover 1989)

Monitoring Affirmative Action Plans

Mayor Norm Rice believes the city of Seattle's affirmative action program is very simple. First, it gives city managers and personnel officers a snapshot of the labor market, so that they are aware of the availability rates for different groups for a given job classification. Through these availability rates, the city can determine whether or not women, people of color, or persons with disabilities are underrepresented in a given job classification within the work force.

Second, the city's affirmative action program encourages managers and personnel officers to make special outreach efforts into groups and communities that are underrepresented in our work force, in order to increase the number of qualified candidates in the potential hiring pool.

Third, the city's affirmative action program directs that when there are two fully qualified candidates for a given position, preference should be given to the candidate that will make their work force more reflective of the labor pool and the broader community.

One misconception is that affirmative action fosters "reverse discrimination" by giving minority candidates an unfair advantage over white candidates. However, a recent statewide study in the state of Washington regarding affirmative action practices concluded that "whites are the primary beneficiaries of affirmative action programs affecting hiring -- this includes large numbers of white men as well as white women."

It is also important to note that once the work force of a certain job classification within a particular city department reaches the point where it reflects the diversity of the available labor pool, affirmative action efforts are terminated for those job classifications. Affirmative action is only utilized for job classifications where women, people of color, and persons with disabilities are underrepresented within the work force.

This overall approach has served Seattle well. It has provided a systematic framework that has opened employment opportunities to qualified individuals who happen to be members of groups that have experienced long-standing and persistent discrimination. A review of the city's work force profiles since the Civil Rights Act of 1964 clearly illustrates the dramatic and positive impact affirmative action has had on providing equal opportunities for more women, people of color, and persons with disabilities.

For example, in 1970, white workers represented an overwhelming 92.1 percent of the city's overall work force, while African Americans, Asians, Hispanics, and Native Americans combined represented only 7.9 percent of all city employees. By 1980, the

percentage of ethnic minority workers in the city work force had risen to 20.1 percent, and by June, 1994, the percentage of people of color in the city work force reached 31.6 percent.

Moreover, during the past five years, the percentage of top city officials and administrators has increased for all minority groups. The representation of top officials and administrators who are African American has more than doubled over the past five years alone, rising from 8.2 percent to 16.6 percent. The representation of women among top officials and administrators has risen by roughly 30 percent, from 28.2 percent to 36.3 percent.

Finally, the city has exceeded its procurement utilization target for direct voucher and blanket contracts for Minority owned Business Enterprises (MBE). The city is currently achieving 5.58 percent for MBE contracts, well above the 5 percent target.

As a result of these accomplishments, the City of Seattle has been recognized as a National leader and model in affirmative action, Equal Employment Opportunity, and diversity. Most recently, in March 1995, the City's Cultural Diversity Program received the City Cultural Diversity Award from the National Black Caucus of Local Elected Officials.

Despite these very positive accomplishments, there is still much to be done. In certain job classifications, and for certain demographic groups, city employment does not fully represent the diversity of the community and the local labor pool. Indeed, women, people of color, and persons with disabilities continue to be underrepresented within the city

work force and Women owned Business Enterprises (WBE) currently receives only 4.47 percent of direct vouchers and blanket contracts which is far below the 12 percent target.

For this reason, Seattle will continue to use affirmative action programs as a means towards equality eroding the real barriers of bias that continue to block many Seattle residents from reaching their full potential. Affirmative action stands as a powerful symbol of their firm commitment to equal opportunity for all. It also affirms the city's commitment to respect and value the many unique perspectives of the community's diverse population. (Rice 1995)

Supporters of Affirmative Action

President Clinton supports affirmative action by directing federal departments to change any program that creates a quota or preference for unqualified people.

Bill Finch believes affirmative action programs should be revised not dismantled. He supports stricter guidelines to ensure federal affirmative action programs do not create quotas; do not promote illegal discrimination; and do not give preference to unqualified individuals.

Terry Nevas believes affirmative action should be maintained until educational programs are implemented and working. Nevas does not support quotas since he views these as demeaning and a source of resentment in the work place. The African-American Cultural Center and the Black Graduate and Professional Student Association held a panel discussion entitled "Affirmative Action Under Fire: What are the Implications For Our Campuses and Our Communities?" Invited to discuss the issue were State Representative Yvonne Dorsey, Southern University Professor of Philosophy Rev. Dr.

L.L. Haynes, Acting Associate Dean of Arts and Sciences Michelle Masse, and Tony Perkins, candidate for state representative in District 64.

Russell L. Jones, associate professor of law at Southern University acted as moderator for the discussion and opened with a brief history of the legislation that led to affirmative action programs. "The interpretation and implementation of the Fourteenth Amendment has been anything but consistent," said Jones. "The court initially refused to apply the Fourteenth Amendment to individual citizens, stating that it was only applicable to states and the federal government."

Jones said, "Seats set aside for minorities in colleges and professional schools, minority scholarships, congressional districts and all gains made under previous affirmative action programs are currently subject to attack." Dorsey said, "Affirmative action has been effective so far, and said it should not be abandoned. We cannot retreat while discrimination continues.

Title VII of the Civil Rights Act of 1964 prohibits discrimination in many aspects of the employment. It applies to most employers engaged in interstate commerce with more than 15 employees, labor organizations, and employment agencies. The act applies to discrimination based on race, color, religion, sex or national origin. Sex includes pregnancy, childbirth or related medical conditions. It makes it illegal for employers to discriminate in hiring, discharging, compensation or the terms, conditions or privileges of employment. Employment agencies may not discriminate when hiring or referring applicants. Labor Organizations are also prohibited from basing membership or union

classifications on race, color, religion, sex, or national origin. "America cannot afford to waste one person." (Carlton 1997)

Dorsey also said, "Hate crimes and violence are still ugly realities in the lives of many Americans." Consequently, Perkins believes that there was no question there have been injustices done toward blacks, but said the problem could not be solved through government programs. "Racism and discrimination is not something the government created," said Perkins. "It's not something the government can take away." Perkins emphasized hard work, and said affirmative action would not build responsible and resourceful citizens.

Haynes pointed out that blacks are not the only minorities, and said he did not agree with affirmative action programs. "I am a Republican," he said. "I believed in Bush, and I believe in Gingrich." As an alternative to affirmative action, Haynes suggested capital punishment for those who discriminate. "Anybody that imposes racism, use of a man's body, [or] holding a man back, should be tried and punished by the courts; we don't need to deal with that kind" he said. "We've got a constitution and law. That's what makes us different from other countries."

Masse said women and minorities have made advances because of affirmative action, indicating that women make 72 cents on the dollar as compared to blacks making 69 cents. She said this represents an improvement, but is still not good enough. "I want to know about the other 30 cents," she said. Masse said affirmative action exists elsewhere besides government programs. "Are you an athlete? That's affirmative action. Do you play the tuba and the band is low on tubas? That's affirmative action. Do you want to

major in philosophy when we have none [philosophy majors]? That's affirmative action. Did your daddy go to the school? That's affirmative action," said Masse.

Perkins disagreed with Masse, and said that 72 cents on the dollar is not an improvement, and tensions between the races have not subsided since the Civil Rights movement. "We have seen no decrease in the strife between the races since the Civil Rights Act of the 60's, in fact we're beginning to see it intensify," said Perkins. "It must boil down to individual accountability and change of heart."

Dorsey said, "Since the Civil War we were treated wrong and it has not been corrected, and the best thing we have is affirmative action." She also mentioned the need for prayer. "Keep praying because I think prayer does change things. I think that's more important than anything else."

Recently, universities, businesses, and many politicians have decided that affirmative action has outlived its usefulness. They argue that it is time for our society to become colorblind, and that affirmative action gives minorities an unfair advantage in getting jobs, entrance into college, or government contracts. But how can our government adopt colorblind policies when its citizens still are handicapped by inequalities? Studies have shown that African Americans, regardless of their financial status, are discriminated against in activities ranging from a job search to going out to dinner.

Prejudice remains in some form whether it be subtle or overt. Affirmative action gives minorities a fair chance for success, and this will eventually lead to the end of stereotypes and prejudice. However, affirmative action alone will not solve the problems faced by minorities. In conjunction with these policies, public education must be improved so that the problems of minorities are attacked both through increased opportunities for jobs and

increased qualification for those positions. Affirmative action alone creates a situation in which people may receive jobs solely on the basis of race, but education alone leaves deserving minorities without jobs because of the prejudice of employers. Together, however, these two solutions can end the cycle which traps many minorities. Should affirmative action be a permanent policy? Of course not. Ideally, all government policies would be colorblind. But now, we must continue to work toward "leveling the playing field." Once this has been achieved, affirmative action should be stopped. But it is clear that society does not ignore race, and for the government to abandon affirmative action now would be a denial of the reality of prejudice and an acceptance of the status of minorities in America. (Becker 1997)

As founder and president of Berkshire and Associates (an organization committed to helping groups meet affirmative action standards), Dawn Hyde is an ardent supporter of affirmative action. She debunks the myth that affirmative action still means quotas, stating that "while many of these programs do involve efforts to assist particular people in developing skills, nothing in these programs requires a contractor to place an unqualified person in a job."

Despite the existence of affirmative action, continued discrimination has diminished this idea to the level of a legality. "Most people would agree that, while Americans understand the concept of a racial and cultural melting pot, they often prefer being with and working with people like themselves," says Hyde. This innate desire forces the government to step in to "promote and ensure equality."

Her position is summed up succinctly by Senator Cohen, a fellow supporter of affirmative action. He observes that "judgment and jobs are not, as we would like to

believe, based on the content of our character." This is very important. Critics of affirmative action claim that true equality can be found only in a color-blind environment. Supporters say such an environment is ideal, and the real facts indicate that many decisions are still "based on the color of one's skin, gender or ethnic background." (Hyde 1997)

Opposing Affirmative Action

Bob Dole opposes race-based preferences by government. He proposed a bill that would have ended preferential treatment in federal contracting and hiring based on race and sex, and prohibit timetables and goals for achieving such balance in U.S. government. He helped supporters get affirmative action contracts in the past and encouraged the Justice Department to prosecute public and private sector discrimination.

Ed Tonkin believes affirmative action is a well intentioned attempt to redress past wrongs that was flawed from its inception and has only increased racial animosities. It detracts from the competent and creates a sense of dependency. Tonkin argues that government affirmative action as it effects the private sector, should be ended. He believes the military by merit, has shown that all humans are equally capable of hard, good work.

Amy Kohn asks, "Is it right to say that a person should be hired simply because they are white?" If the answer is no, shouldn't we then question the wisdom of mandating that companies hire people simply because they are black? Or female? Or are snazzy dressers, for that matter? Many liberal, open minded people of all colors and genders have begun to say no. They have realized that there is no justice in declaring that it is

wrong to fire people on the basis of their color, but wise and fair to hire people for the same reason.

The primary reason some believe the affirmative action system needs change is because of the amount of resentment its programs have created across the board. The fierce debate surrounding this issue reveals that there is a growing frustration among those not receiving the privileges affirmative action provides. Many such people, when passed over for employment or advancement, have wonder if those who have been promoted received their positions based on their gender or race, as opposed to their merit.

The fact is, America is a nation of great diversity, and while the affirmative action programs were founded on very worthy goals, our nation cannot achieve social equality, or even harmony, by granting privileges to one group over another. Perhaps, instead of having quotas imposed on them, businesses suspected of discrimination could have their hiring practices monitored by an outside official from the government, or be penalized through fines and restrictions.

In the end, the only way we can end discrimination in the work place is by ending discrimination in our nation as a whole. We form our beliefs and opinions as children, and it is with our youth that we need to begin fighting racism and prejudice. If Americans are taught from a young age to cherish diversity, to judge people by their character, then they will retain these ideals as adults when it is they who are in positions of authority. In addition, the effects of education are long term, whereas the programs of affirmative action provide only a very temporary solution.

Breaking the cycle of poverty is as important as eliminating discrimination. Minorities often become trapped in America's inner cities, where an impoverished school system

leaves children unprepared to compete for quality employment. By improving the educational opportunities offered to these children, we will improve their employment opportunities as adults, and this, combined with a focused effort to eliminate racism, will do more to create diversity in the American work place than affirmative action ever could.

Affirmative action must not be left as it is. With the appropriate reform, it can begin working for equality instead of against it. Equal opportunity in the true sense of the word is a concept well within our grasp. We must not be afraid to reach it. (Kohn 1997)

Personnel Challenges of Enforcing Affirmative Action

The affirmative action department is primarily responsible for implementing human resource acquisition decision rules emphasizing social equity for protected classes (minorities, women, persons with disabilities). Thus, it most heavily affects recruitment, selection, and promotion policies and procedures. The affirmative director shares responsibility with the personnel director in this area. Once members of protected classes are hired, other personnel systems (civil service or collective bargaining) influence the way in which planning, development, and sanction function are performed.

Human Resource Managers are challenged with conducting targeted recruitment efforts, making sure the applicant pool has a sufficient representation of minorities and women who also meet the minimum qualifications for the position. They select either the most qualified applicant or the most qualified minority applicant, depending on the extent of pressure and legal authority to appoint a minority group member. Additionally, affirmative action challenges to the morally superior civil service system. (Klingner 1993)

Summary

Many controversial issues involve affirmative action in government organizations. Calculating the adverse impact of affirmative action is an excellent method for determining the ratio of the demographics of the employment population. It is used for implementing affirmative action plans. Using the adverse impact method may promote a diverse employment population. In addition, organizations that use this method are more likely to stay in compliance with Executive Order 11246. We must continue to monitor affirmative action plans to promote a diverse workforce and social equality. There is no political group that exclusively opposes or supports affirmative action as it is written. Minorities and women are more likely to support affirmative action since they may benefit from the program.

PART II
DEVELOPMENT

CHAPTER 3

LEGAL ISSUES OF AFFIRMATIVE ACTION

"We cannot expect people to the right thing unless they know the right thing to do."
Fred Smith (Maxwell 1994)

This chapter discusses some of the legal issues that have an impact on affirmative action in government. I will discuss some cases and judgments regarding the interpretation of the federal law. Additionally, I will discuss changes to the initial affirmative action policy.

Employment Discrimination Law

"My client says he took one look around your company and realized there were nothing but whites," said the attorney. "He says he's perfect for the job and that you rejected him because he's Hispanic."

"That's not true!" insisted the owner. "We hire anybody who's qualified for the job."

"I hope you can prove that in court," retorted the lawyer.

Twenty thousand dollars!! That's how much the American Bar association has estimated it costs in legal fees alone to defend a discrimination lawsuit that goes to trial.
(Wendover, 1989)

In this litigious society, the need for a solid knowledge of employment law has become crucial for small business managers. In addition to the myriad of federal laws, each state has established its own statutes.

Federal and state labor laws have been enacted to protect those living in the United States from discrimination in hiring. The main body of employment discrimination laws is composed of federal and state statutes. There are currently over 400 federal laws pertaining to employee rights and selection. (Wendover, 1989)

Employment Discrimination laws seek to prevent discrimination based on race, sex, religion, national origin, physical disability, and age by employers. In addition, there is a growing body of law preventing or occasionally justifying employment discrimination based on sexual orientation. Discriminatory practices include bias in hiring, promotion, job assignment, termination, and compensation and various types of harassment. The United States Constitution and some state constitutions provide additional protection when the employer is a governmental body. (Raski 1997)

The fifth and fourteenth amendments of the United States Constitution limit the power of the federal and state governments to discriminate. The fifth amendment has an explicit requirement that the federal government not deprive any individual of "life, liberty, or property," without the due process of the law. It also contains an implicit guarantee that each person receive the equal protection of the laws. The fourteenth amendment explicitly prohibits states from violating an individual's rights of due process and equal protection. In the employment context the right of equal protection limits the power of the state and federal governments to discriminate in their employment practices by treating employees, former employees, or job applicants unequally because of a group (such as a race or sex) they are associated with. Due process protection requires that employees have a fair procedural process before they are terminated if the termination is

related to a "liberty"(such as the right to free speech) or property interest. State constitutions may also afford protection from employment discrimination. (Raski 1997)

Discrimination in the private sector is not directly constrained by the constitution, but has become subject to a growing body of federal and state statutes.

Title VII of the Civil Rights Act of 1964 prohibits discrimination in many more aspects of the employment relationship. It applies to most employers engaged in interstate commerce with more than 15 employees, labor organizations, and employment agencies. The Act applies to discrimination based on race, color, religion, sex or national origin. Sex includes pregnancy, childbirth or related medical conditions. It makes it illegal for employers to discriminate in hiring, discharging, compensation, or terms, conditions, and privileges of employment. Employment agencies may not discriminate when hiring or referring applicants. Labor organizations are also prohibited from basing membership or union classifications on race, color, religion, sex, or national origin.

The nineteenth century Civil Rights Acts, amended in 1993, ensure all persons equal rights under the law and outline the damages available to complainants in actions brought under the Civil Rights Act of 1964, Title VII, the American with Disabilities Act of 1990, and the Rehabilitation Act of 1973.

The Equal Opportunity Employment Commission interprets and enforces the Equal Payment Act, Age Discrimination in Employment Act, Title VII, Americans With Disabilities Act, and sections of the Rehabilitation Act. The Commission was, itself, established by Title VII. Its enforcement provisions are contained in section 2000e-5 of Title 42, and its regulations and guidelines are contained in Title 29 of the Code of Federal Regulations, part 1614. (Raski 1997)

The Pregnancy Discrimination Act of 1978 amended Title VII to prohibit discrimination on the basis of childbirth, pregnancy or related medical conditions.

The Age Discrimination in Employment Act (as amended in 1978) prohibits discrimination against otherwise handicapped individuals. This statute applies to all employers with federal contracts in excess of \$2500 or that receive financial assistance from the federal government.

Teacher Layoff

Nearly two decades after the court first embraced the concept, affirmative action faced what may be its stiffest test in the form of a teacher layoff case that became a rallying point for opponents. The justices also had to decide whether to review the constitutionality of California's Proposition 209, which bans using race and gender as factors in filling state jobs or admitting students to college. That voter initiative was upheld by lower courts.

The cases went before a court that in recent years has grown increasingly hostile toward race-based policies. That trend has been most noticeable in voting-rights cases, in which majority black election districts consistently have been declared unconstitutional. The school case had a rather simple beginning in 1989, when the Piscataway, New Jersey, school board decided to eliminate one teaching position in the high school's business education department. The state law required layoffs in reverse order of seniority, but the two most junior teachers, Sharon Taxman and Debra Williams, had started their jobs on the same day nine years earlier. Williams was the department's only black teacher, and the school board's desire to promote racial diversity cost Taxman her job. The layoff, she was told, had nothing to do with her abilities and everything to do with her race.

Lower courts ruled against the school board and for the fired white teacher. They said the board's action violated anti-bias federal law known as Title VII. The 3rd U.S. Circuit Court of Appeals, in ruling for Taxman, said Title VII prohibits any race-conscious action not taken to remedy past discrimination.

The Piscataway school board voted 5-3 to settle with Taxman's case for \$433,500 after the Black Leadership Forum, an alliance of civil rights groups, came forward to say it would pay 70 percent. "This settlement demonstrates the panic within the civil right establishment," said Clint Bolick of the conservative Institute for Justice in Washington. "This could have been a knockout blow for racial preferences." (Fayetteville Observer Times 1997)

Adarand Constructors v. Peña

The case of Adarand Constructors, Inc. v. Peña, Secretary of Transportation, et al Certiorari to the United States Court of Appeals for the Tenth Circuit No. 93-1841 was argued January 17, 1995 and decided June 12, 1995.

Most federal agency contracts must contain a subcontractor compensation clause, which gives a prime contractor a financial incentive to hire subcontractors certified as small businesses controlled by socially and economically disadvantaged individuals, and requires the contractor to presume that such individuals include minorities or any other individuals found to be disadvantaged by the Small Business Administration (SBA). The prime contractor under a federal highway construction contract containing such a clause awarded a subcontract to a company that was certified as a small disadvantaged business. The record does not reveal how the company obtained its certification, but it could have been by any one of three routes: under one of two SBA programs, known as the 8(a)

and 8(d) programs, or by a state agency under relevant Department of Transportation regulations. Petitioner Adarand Constructors, Inc., which submitted the low bid on the subcontract but was not a certified business, filed suit against respondent federal officials, claiming that the race based presumptions used in subcontractor compensation clauses violate the equal protection component of the Fifth Amendment's due process clause. The district court granted respondents summary judgment. In affirming, the Court of Appeals assessed the constitutionality of the federal race based action under a lenient standard, resembling intermediate scrutiny, which it determined was required by *Fullilove v. Klutznick and Metro Broadcasting, Inc.*

The judgment was vacated, and the case was remanded. Justice O'Connor delivered an opinion with respect to Parts I, II, III-A, III-B, III-D, and IV, which was for the court except insofar as it might be inconsistent with the views expressed in Justice Scalia's concurrence, concluding that:

"Adarand has standing to seek forward looking relief. It has met the requirements necessary to maintain its claim by alleging an invasion of a legally protected interest in a particularized manner, and by showing that it is very likely to bid, in the relatively near future, on another government contract offering financial incentives to a prime contractor for hiring disadvantaged subcontractors."

All racial classifications imposed by federal, state, or local governmental agencies must be analyzed by a reviewing court under strict scrutiny. In *J. A. Croson Company*, a majority of the court held that the fourteenth amendment requires strict scrutiny of all race based action by state and local governments. While *Croson* did not consider what standard of review the fifth amendment requires for such action taken by the federal

government, the court's cases had established three general propositions with respect to governmental racial classifications.

First, skepticism: "any preference based on racial or ethnic criteria must necessarily receive a most searching examination" *Wygant* *Jackson Board of Education*. Second, consistency: "the standard of review under the Equal Protection Clause is not dependent on the race of those burdened or benefited by a particular classification,." Third, congruence: "equal protection analysis in the fifth amendment area is the same as that under the fourteenth amendment." Taken together, these propositions lead to the conclusion that any person, of whatever race, has the right to demand that any governmental actor subject to the constitution justify any racial classification subjecting that person to unequal treatment under the strictest judicial scrutiny.

However, a year after *Croson*, the court, in *Metro Broadcasting*, upheld two federal race based policies against a fifth amendment challenge. The court repudiated the long held notion that "it would be unthinkable that the same constitution would impose a lesser duty on the federal government" than it does on a state to afford equal protection of the laws, *Bolling v. Sharpe*, by holding that congressionally mandated "benign" racial classifications need only satisfy intermediate scrutiny. By adopting that standard, *Metro Broadcasting* departed from prior cases in two significant respects.

First, it turned its back on *Croson*'s explanation that strict scrutiny of governmental racial classifications is essential because it may not always be clear that also called preference is in fact benign. Second, it squarely rejected one of the three propositions established by this court's earlier cases, namely, congruence between the standards

applicable to federal and state race based action, and in doing so also undermined the other two.

The propositions undermined by Metro Broadcasting all derive from the basic principle that the fifth and fourteenth amendments protect persons, not groups. It follows from that principle that all governmental action based on race should be subjected to detailed judicial inquiry to ensure that the personal right to equal protection has not been infringed. Thus, strict scrutiny is the proper standard for analysis of all racial classifications, whether imposed by a federal, state, or local actor. To the extent that Metro Broadcasting is inconsistent with that holding. It was overruled.

The decision here makes explicit that federal racial classifications, like those of a state, must serve a compelling governmental interest, and must be narrowly tailored to further that interest. Thus, to the extent that Fullilove held federal racial classifications to be subject to a less rigorous standard, it is no longer controlling. Requiring strict scrutiny is the best way to ensure that courts will consistently give racial classifications a detailed examination, as to both ends and means. It is not true that strict scrutiny is strict in theory, but fatal in fact. Governmental agencies are not disqualified from acting in response to the unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country. When race-based action is necessary to further a compelling interest, such action is within constitutional constraints if it satisfies the "narrow tailoring" test set out in this court's previous cases.

Because this decision alters the playing field in some important respects, the case is remanded to the lower courts for further consideration. The Court of Appeals did not decide whether the interests served by the use of subcontractor compensation clauses are

properly described as "compelling." Nor did it address the question of narrow tailoring in terms of this court's strict scrutiny cases. Unresolved questions also remain concerning the details of the complex regulatory regimes implicated by the use of such clauses.

Justice Scalia agreed that strict scrutiny must be applied to racial classifications imposed by all governmental actors, but concluded that government can never have a "compelling interest" in discriminating on the basis of race in order to "make up" for past racial discrimination in the opposite direction. Under the constitution there can be no such thing as either a creditor or a debtor race. We are just one race in the eyes of government.

O'Connor, J., announced the judgment of the court and delivered an opinion with respect to Parts I, II, III-A, III-B, III-D, and IV, which was for the court except insofar as it might be inconsistent with the views expressed in the concurrence of Scalia, J., and an opinion with respect to Part III-C. Parts I, II, III-A, III-B, III-D, and IV of that opinion were joined by Rehnquist, C. J., and Kennedy and Thomas, JJ., and by Scalia, J., to the extent heretofore indicated; and Part III-C was joined by Kennedy, J. Scalia, J., and Thomas, J., filed opinions concurring in part and concurring in the judgment. Stevens, J., filed a dissenting opinion, in which Ginsburg, J., joined. Souter, J., filed a dissenting opinion, in which Ginsburg and Breyer, J.J., joined. Ginsburg, J., filed a dissenting opinion, in which Breyer, J., joined. (Legal Information Institute)

Bush, Governor of Texas et al. v. Vera et al.

Another case involves the 1990 census which revealed a population increase entitling Texas to three additional congressional seats. In an attempt to comply with the Voting Rights Act of 1965 (VRA), the Texas Legislature promulgated a redistricting plan that,

among other things, created District 30 as a new majority African American district in Dallas County and District 29 as a new majority Hispanic district in Harris County, and reconfigured District 18, which is adjacent to District 29, as a majority African American district. After the Department of Justice precleared the plan under VRA, the plaintiffs, six Texas voters, filed this challenge alleging that 24 of the State's 30 congressional districts constitute racial gerrymanders in violation of the fourteenth amendment. The three judge District Court held Districts 18, 29, and 30 unconstitutional. The Governor of Texas, private intervenors, and the United States (as intervenor) appealed.

The judgment was affirmed. Justice O'Connor, joined by the Chief Justice and Justice Kennedy, concluded that the Plaintiff Chen, who resides in District 25 and has not alleged any specific facts showing that he personally has been subjected to any racial classification, lacks standing under *United States v. Hays*. However, plaintiffs Blum and Powers, who reside in District 18, plaintiffs Thomas and Vera, who reside in District 29, and plaintiff Orcutt, who resides in District 30, have standing to challenge Districts 18, 29, and 30.

Districts 18, 29, and 30 are subject to strict scrutiny under this Court's precedents. Strict scrutiny applies where race was "the predominant factor" motivating the drawing of district lines, and traditional race neutral districting principles were subordinated to race. This is a mixed motive case, and a careful review is therefore necessary to determine whether the districts at issue are subject to such scrutiny. Findings that Texas substantially neglected traditional districting criteria such as compactness, that it was committed from the outset to creating majority minority districts, and that it manipulated district lines to exploit unprecedentedly detailed racial data, taken together, weigh in

favor of the application of strict scrutiny. However, because factors other than race, clearly influenced the legislature, each of the challenged districts must be scrutinized to determine whether the District Court's conclusion that race predominated can be sustained.

District 30 is subject to strict scrutiny. Appellants do not deny that the district shows substantial disregard for the traditional districting principles of compactness and regularity, or that the redistricters pursued unwaveringly the objective of creating a majority African American district. Their argument that the district's bizarre shape is explained by efforts to unite communities of interest, as manifested by the district's consistently urban character and its shared media sources and major transportation lines to Dallas, must be rejected. The record contains no basis for displacing the District Court's conclusion that race predominated over the latter factors, particularly in light of the court's findings that the State's supporting data were largely unavailable to the legislature before the district was created and that the factors do not differentiate the district from surrounding areas with the same degree of correlation to district lines that racial data exhibit. Appellants' more substantial claim that incumbency protection rivaled race in determining the districts shape is also unavailing. The evidence amply supports the District Court's conclusions that racially motivated gerrymandering had a qualitatively greater influence on the drawing of district lines than politically motivated gerrymandering, which is not subject to strict scrutiny. This political gerrymandering was accomplished in large part by the use of race as a proxy for political characteristics, which is subject to such scrutiny.

Interlocking Districts 18 and 29 are also subject to strict scrutiny. Those districts' shapes are bizarre, and their utter disregard of city limits, local election precincts, and voter tabulation district lines has caused a severe disruption of traditional forms of political activity and created administrative headaches for local election officials. Although appellants presented evidence that incumbency protection played a role in determining the bizarre district lines, the District Court's conclusion that the districts' shapes are unexplainable on grounds other than race and are the product of presumptively unconstitutional racial gerrymandering is inescapably corroborated by the evidence.

Districts 18, 29, and 30 were not narrowly tailored to serve a compelling state interest. Creation of the three districts was not justified by a compelling state interest in complying with the "results" test of VRA.

It may be assumed without deciding that such compliance can be a compelling state interest. States attempting to comply with VRA retain discretion to apply traditional districting principles and are entitled to a limited degree of leeway. However, a district drawn in order to satisfy must not subordinate traditional districting principles to race substantially more than is reasonably necessary. The districts at issue fail this test, since all three are bizarrely shaped and far from compact, and those characteristics are predominantly attributable to gerrymandering that was racially motivated and/or achieved by the use of race as a proxy. Appellants Lawson et al. misinterpret Miller when they argue that bizarre shaping and noncompactness go only to motive and are irrelevant to the narrow tailoring inquiry. Unavailing is the United States' contention that insofar as bizarreness and noncompactness are necessary to achieve the State's compelling interest in compliance with VRA while simultaneously achieving other legitimate redistricting

goals, the narrow tailoring requirement is satisfied. The bizarre shaping and noncompactness of the districts in question were predominantly attributable to racial, not political, manipulation, while the government's argument addresses the case of an otherwise compact majority minority district that is misshapen by predominantly nonracial, political manipulation.

The district lines at issue are not justified by a compelling state interest in ameliorating the effects of racially polarized voting attributable to Texas' long history of discrimination against minorities in electoral processes. Among the conditions that must be satisfied to render an interest in remedying discrimination compelling is the requirement that the discrimination be specific and identified. The only current problem that appellants cite as in need of remediation is alleged vote dilution as a consequence of racial bloc voting, the same concern that underlies their VRA compliance defense. Once the correct standard is applied, the fact that these districts are not narrowly tailored to comply with VRA forecloses this line of defense.

Creation of District 18 was not justified by a compelling state interest in complying with VRA which seeks to prevent voting procedure changes leading to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise. The problem with appellants' contention that this nonretrogression principle applies because Harris County previously contained a congressional district in which African American voters always succeeded in selecting African American representatives is that it seeks to justify not maintenance, but substantial augmentation, of the African American population percentage in District 18. Nonretrogression is not a license for the State to do whatever it deems necessary to ensure continued electoral success. It merely

mandates that the minority's opportunity to elect representatives of its choice not be diminished, directly or indirectly, by the State's actions. District 18 is not narrowly tailored to the avoidance of VRA liability.

Various of the dissents' arguments, none of which address the specifics of this case, and which have been rebutted in other decisions, must be rejected. Justice Thomas, joined by Justice Scalia, concluded that application of strict scrutiny in this case was never a question, since this Court's decisions have effectively resolved that the intentional creation of majority minority districts, by itself, is sufficient to invoke such scrutiny. See, e.g., *Adarand Constructors, Inc. v. Peña*. (strict scrutiny applies to all government classifications based on race); *Miller v. Johnson*, (Georgia's concession that it intentionally created majority minority districts was sufficient to show that race was a predominant, motivating factor in its redistricting). Application of strict scrutiny is required here because Texas has readily admitted that it intentionally created majority minority districts and that those districts would not have existed but for its affirmative use of racial demographics. Assuming that the State has asserted a compelling state interest, its redistricting attempts were not narrowly tailored to achieve that interest.

Justice O'Connor, J., announced the judgment of the Court and delivered an opinion, in which Rehnquist, C. J., and Kennedy, J., joined. O'Connor, J., also filed a separate concurring opinion. Kennedy, J., filed a concurring opinion. Thomas, J., filed an opinion concurring in the judgment, in which Scalia, J., joined. Stevens, J., filed a dissenting opinion, in which Ginsburg and Breyer, JJ., joined. Souter, J., filed a dissenting opinion, in which Ginsburg and Breyer, JJ., joined. (Legal Information Institute 1991)

Firefighters Local Union No. 1784 v. Stotts

The final case involved Firefighters Local Union No. 1784 v. Stotts (467 U.S. at 565). This 1983 case was a challenge to a court of appeals decision upholding an order enjoining the City of Memphis from following its seniority system in determining layoffs. In 1977, Carl Stotts, a firefighter captain, filed a class action suit charging the Memphis Fire Department with a pattern or practice of making hiring and promotion decisions on the basis of race in violation of Title VII. In 1980, the district court issued a consent decree that was designed to remedy the hiring and promotion practices that excluded blacks (467 U.S. at 565). The city agreed to promote 13 specific individuals, to provide back pay to 81 employees of the department, and to adopt a long-term goal of increasing minority representation in each job classification of the Fire Department. The city did not admit to "any violations of law, rule or regulation with respect to the allegations," a standard practice in consent decrees (467 U.S. at 565). Finally, the plaintiffs waived any additional relief except the enforcement of the decree and the district court "retained jurisdiction for such further orders as may be necessary or appropriate to effectuate the purposes of this decree" (467 U.S. at 565-566). The Firefighters' brief argued that the district court had impermissibly modified the consent decree and that the modification of the consent decree was flawed because it was not limited to making whole the actual victims of discrimination. The Stotts case involved the power of the court to order relief. According to the Firefighters, the courts have only one with regard to Title VII:

As this Court explained in Franks, 242 U.S. at 764 n. 21, the Congress that "added the phrase speaking to 'other equitable relief' in section 706(g) ...indicated that 'rightful place' was the intended objective of Title VII and the relief accorded thereunder," and the Court understood the portion of the section-by-section

analysis...to be "emphatic confirmation that the federal courts are empowered to fashion such relief as the particular circumstances as the case may require to effect restitution, making whole insofar as possible the victims of racial discrimination.

(Legal Information Institute 1991)

Summary

Federal laws clearly indicate the legal parameters of affirmative action. However, all laws are subject to interpretation by the courts. We must remain conscientious of the possibility that the law will be challenged in court and ruled in favor of individuals who are not indigent. The above cases are examples of how the interpretation of affirmative action can have an impact on businesses, political districts or the local governments. Each case presents a unique point of affirmative action. In *Adarand Constructors Inc. v. Peña*, Department of Transportation, et al. is unique because it involves a business rather than a person. *Bush, Governor of Texas et al. v. Vera et al.* involved voting districts rather than employment. The third case involved the firefighter union challenging the city of Memphis, Tennessee layoff practices. Although each of these cases represents an argument in favor of the plaintiff, it does not necessarily mean that all discrimination suits are ruled in this manner.

CHAPTER 4

POLITICAL RATIFICATIONS

"Nearly anyone can stand adversity, but if you want to test their character, give them power." Abraham Lincoln (Maxwell 1994)

This chapter discusses impact of Political Ratifications of affirmative action in the public and private sector. I will discuss some of the Democratic Party and the Republican Party views regarding the different aspects of affirmative action. Additionally, I will review some of the projected considerations for affirmative action.

In truth, affirmative action programs have spanned seven different presidential administrations—four Republican and three Democratic. Although the originating document of affirmative action was President Johnson's Executive Order 11246, the policy was significantly expanded in 1969 by President Nixon and then Secretary of Labor George Schultz. President Bush also enthusiastically signed the Civil Rights Act of 1991, which formally endorsed the principle of affirmative action. Thus, despite the current split along party lines, affirmative action has traditionally enjoyed the support of Republicans as well as Democrats. (Jackson 1996)

The recent shift in affirmative action appears to be the result of one simple thing: politics. Affirmative action has become the latest wedge issue of political parties. Just four years ago Senator Bob Dole sponsored legislation creating a federal panel, the Glass Ceiling Commission, to study the limited progress made by minorities and women. As a presidential candidate, Dole proposed legislation that would ban preferential treatment in federal programs.

Besides Mr. Dole, other politicians support either eliminating or revising affirmative action, including President Clinton, who supports a reformed version of affirmative action that complies with the 1995 ruling by the Supreme Court. Critics view affirmative action as a departure from the principles of meritocracy and individual striving and as a policy that primarily hurts white men, who may have had no part in past or present discrimination. (Carlton 1997)

Democratic Party Position

Nicholas Mills believes the election of Ron Brown as the first black chairman of the Democratic National Committee triggered a new round of souls-searching among Democrats. Was the party committing political suicide by becoming too strongly identified with the aspirations of minority voters? Had America become so mired in racism that whites would desert the Democrats because blacks seemed to be running things? (Mills 1994)

Steven Holmes argues that the Democratic Party believes strongly that everyone should have equal access to job opportunities and that all individuals should be protected from unfair discrimination. Individuals should have the right to redress for past discrimination on the basis of race, color, gender or disability and that formal equality be entrenched through the Bill of Rights, an Equal Opportunities Act and the courts.

Holmes believes the ultimate aim of an affirmative action policy should be the promotion of equity, whereby all citizens are treated in a fair and just manner and receive a fair share of national resources in accordance with their needs and responsibilities in society.

Holmes further explains that positive action in the public service should be based on transparent and accountable decision-making to ensure that the public service becomes efficient and cost-effective. At the same time, the public service must also represent the community and create opportunities for previously disadvantage groups. In the private sector positive action should take place through voluntary or negotiated programs to meet targets and goals of transformation, with government only playing an enabling role and providing tax breaks for employers initiating development programs. (Holmes 1995)

However, positive action should only take place under conditions which may be considered reasonable so as to create an equitable and just society. Furthermore, it is crucial that the economy remain as free as possible from government bureaucracy and regulation, so that through economic growth and equity, a sustainable improvement in the welfare of society can be achieved. (Holmes 1995)

The Democratic Party collectively stands against any form of tokenism. It also vigorously opposes rigid quotas and timetables, social engineering which results in "reverse apartheid", and decisions which result in inefficiency and lead to high costs. Reacting to a Supreme Court ruling on June 28, 1995, the Clinton administration issued guidelines for evaluating federal affirmative action programs that may make many of them harder to justify legally. (Holmes 1995)

As the administration took the first step in what could be an overhaul of those programs, Republicans in Congress are moving forward with plans to do away with all federal efforts intended to give minorities and women extra help in employment and contracting. The court's decision set stricter standards for federal programs that provide such preferences, and the administration's guidelines for compliance with the ruling call

into question what have been some long-standing justifications of many affirmative action programs.

For example, a 38-page memorandum prepared by the Justice Department and sent to all federal agencies, states that such programs must now be justified by evidence of discrimination in a specific sector rather than a general assumption of widespread racism or sexism. (Holmes 1995)

Under the guidelines, the administration considers programs whose sole justification is promoting diversity to be legally suspect. Programs that seek to diversify such institutions as law enforcement agencies or colleges, which may have the added goals of improving interaction with a diverse public or providing a richer cultural experience, may be acceptable.

"Diversity would not be a justification if you're talking about the manufacturing of widgets," said a senior Justice Department official, who spoke only if promised not to be identified. The Justice Department memorandum is separate from a review now being conducted by the Clinton administration of all federal affirmative action programs. Senior administration officials say the review being conducted by a White House aide, Christopher Edley Jr., focuses on questions like whether federal affirmative action programs are run well, whether they achieve their goals, and whether they are fair. The Justice Review focused purely on what it takes for a program to be legal. The president ordered a review as affirmative action burst onto the political scene. Presidential candidates from both parties have struggled to stake out positions that they hope will appeal to what they see as a growing public dissatisfaction with programs that set aside contracts or positions for groups like minorities or women.

The Justice Department's legal interpretation gave President Clinton some legal shielding to pare back some federal affirmative action programs as he entered the presidential campaign. However, the Republicans initiated proposals which forced him to face the issue more starkly. The High Court's opinion in *Adarand Constructors Inc. vs. Peña* said that any federal program that classified people according to race must be subject to strict scrutiny by the courts and would have to be "narrowly tailored" and serve a "compelling national interest." (Holmes 1995)

According to administration officials, a number of programs would have difficulty passing that legal test, specifically some set-aside programs administered by the Federal Communications Commission, the Transportation Department and the Small Business Administration. Officials believe the programs favor the requirement for federal contractors to develop goals to increase the number of minorities and women in their work forces. These programs would probably pass constitutional muster since they do not require contractors to give minorities or women preference over white men.

The memorandum, prepared by the Justice Department's Office of Legal Counsel, was intended to get federal agencies to think about restructuring their affirmative action programs before they are hit with lawsuits charging that the programs involve reverse discrimination. It stresses that the programs need not be suspended while they are being evaluated. (Holmes 1995)

Reverend Jessie Jackson believes that affirmative action has become the operative code word for racial politics in the 1996 presidential campaign season. He believes this issue is one with which we have unfortunately become all too familiar in American electoral politics. Joining the ranks of politically divisive wedge issues deployed by

conservatives, affirmative action is being used to divert attention away from issues that are truly in the national interest by capitalizing on voters' fears through scapegoating and blame.

While we know that a majority of Americans have benefited from affirmative action programs, Latinos, Asian-Americans, Native Americans, African-Americans, veterans, the disabled, and women of all races and ethnic backgrounds, Jackson believes political rhetoric has forced a black face on the issue. (Jackson 1996)

Republican Party Positions

Affirmative action has become a subject of hot debate nationwide recently, with Newt Gingrich and the army of Republicans pushing to end so-called "preferential hiring" rules.

In California, Governor Pete Wilson has already pushed an initiative ending affirmative action practices in colleges and universities. The initiative passed after a ten hour meeting in the California Board of Regents with a 15 to 10 vote.

In Michigan, the state legislature is conducting hearings on the "fairness" of affirmative action. David Jaye, a Republican member of the Michigan state legislature, said affirmative action creates economic imbalances within the system. "Why should a rich black kid whose parents are doctors in Birmingham get preferential treatment over a poor white kid born to a welfare mom from Mt. Clemens?" Jaye said. (Modi 1996)

Affirmative action began in the 1960s with the Civil Rights Bill, but the definition has been broadened to include any program that deals with the preferential treatment of minorities. While Republicans and others, who sometimes label affirmative action "reverse discrimination," press forward with their agenda, President Bill Clinton is trying

to save affirmative action. Clinton spoke in favor of the job hiring policy. "Let me be clear: affirmative action has been good for America," Clinton said. "We should have a simple slogan: Mend it, but don't end it."

Governor Wilson responded to Clinton's speech, saying, "it was a political strategy to divide and placate the advocates of continued racial discrimination. He should have said end it," the Republican presidential hopeful said. "You can't mend it."

Wilson isn't the only prominent lawmaker speaking out against affirmative action. Senate Majority Leader Bob Dole, Republican-Kansas, has promised to introduce legislation he said will "get the government out of the group preference business." While politicians battle it out, national polls indicate most people oppose continuing affirmative action. According to a recent Associated Press poll, about 38 percent of Americans said they feel such policies are fair, but about 50 percent said they are not.

In Poughkeepsie, New York, it seems many people agree with the Republicans. Joe Rider, a Poughkeepsie resident, said affirmative action is unfair. He states, "If I were a boss, I would hire based on qualifications, not based on being a woman, black, white, yellow, or red." (Modi 1996)

Deane L. Springstead, president of the Dutchess County Deputy Sheriff's Police Benevolent Association said he felt affirmative action is wrong. "I think that affirmative action is reverse discrimination," Springstead said. "In the private sector, I don't think there's a need for affirmative action because they try to get the best people. In the public sector, there should be some sort of standardized testing." (Modi 1996)

In two of his first official acts as Governor, Mike Foster moved to end affirmative action programs in Louisiana government, and at the same time proclaimed a Martin

Luther King holiday. Foster, a conservative white Republican who defeated a liberal black Democrat, declared his belief that King himself would have opposed affirmative action. "I can't find anywhere in his writings that he wanted reverse discrimination," Foster said. "He just wanted an end to all discrimination based on color."

The exact effect of Foster's executive order on affirmative action was not immediately clear. At a news conference, Foster acknowledged that his executive order cannot stop affirmative action in any program funded with federal money or in any state affirmative action program specifically protected by Louisiana law.

Almost half of Louisiana's \$12 billion budget comes from the federal government, including most of the \$3.2 billion Medicaid program. "But it sets the tone of what I want to do," said Foster. Foster, who made opposition to affirmative action a centerpiece of his campaign, said he hopes to eliminate all state-funded affirmative action programs and set asides by abolishing the laws in a special legislative session.

With a more conservative legislature, Foster should not have too much trouble getting his own way. Of 144 lawmakers, 31 are black and 14 are women. Although only 40 legislators are Republican, many of the Democrats are conservative.

Proclaiming King's birthday as a holiday is optional for a governor in Louisiana. The birthday has been declared a holiday each year for the past eight years under two governors.

Warren Birkett, a black businessman and former chairman of the Louisiana Association of Business and Industry, said he disagreed with Foster's decision to go after affirmative action. "I think the intent to have a colorblind society is good, but affirmative action opens doors for minorities," he said. "I think it will be harder for minorities to get

contracts without it." (Coates 1995) In California, Republican Governor Pete Wilson led the University of California's Board of Regents to vote last year to drop race and gender requirements in admissions, hiring and awarding of contracts.

Wilson also abolished advisory boards and councils that monitor state compliance with affirmative action goals. That executive order also halved the money the California Transportation Department must award to minority and women owned companies.

As presidential candidate, Republican Senator Bob Dole planned to introduce legislation banning all federal affirmative action efforts that involved such "preferences." He proposed a bill, which was introduced in the House of Representatives by Republican Charles Canady, Republican-Florida., defining preferences to include any numerical goal for the hiring or promotion of minorities or women. The Dole-Canady bill would also ban the federal government from requiring or encouraging federal contractors to adopt affirmative action programs with numerical goals. Additionally, it would prohibit the government from entering into consent decrees with private companies that call for the use of hiring and promotion goals.

Dole also believes the government should provide assistance based on economic status, not gender or race. Dole said the government should fight discrimination with justice and opportunity, not more discrimination.

Ideally, affirmative action is positive because it attempts to integrate minorities and women into the work place. Like too many programs enacted by the government, affirmative action has strayed from its original intent. It's become a program dependent upon filling quotas and meeting numbers based on gender and ethnicity.

Ryan Sims argues that affirmative action is discrimination. Using discrimination to fight discrimination doesn't teach us anything. All it does is legitimize discriminatory hiring practices. He asks, "Can we, as the world's leading democratic nation, afford to tolerate any more discrimination? The answer is no. What can we do to rectify this? We'll have to change the process. We'll have to change today's affirmative action to meet yesterday's ideal". (Sims 1996)

A less sweeping approach is being pushed by Representative Gary Franks, Republican-Connecticut, who said he intended to begin attaching amendments to appropriation bills that would halt set-aside programs run by the agency whose financing is covered by that appropriation. The administration's legal opinion and the drafting of the Republican legislation indicates that the debate over affirmative action is beginning to coalesce into battles over specific proposals.

"We challenge the president to veto my bill if he likes," Franks said. "But, I don't think that would be a popular thing for him to do, to say to America that he believes we should have set-asides for minorities and women." (Dove 1997)

Projected Considerations

Although there has been a great deal of talk in Congress of legislation that would eliminate virtually all federally sponsored affirmative action, Congress cannot alter voluntary affirmative action in the private sector or state and local governments unless members of Congress are prepared to rework the 1964 Civil Rights Act.

Additional discussions of affirmative action have revolved around changing the focus of the program to one of helping the economically disadvantaged. Supporters of affirmative action do not embrace this change. Civil rights advocates say that such an

effort should be made in addition to affirmative action, not in place of it. Affirmative action was not created as an antipoverty program.

With all the demographic changes occurring in our nation, it may indeed be time to change affirmative action. The achievements of affirmative action have been impressive, but the premises that underlie it have changed and may require revising. The focus on affirmative action may provide us with an opportunity to shift from affirmative action to affirming diversity. (Carlton 1997)

Summary

We all have a different interpretation of affirmative action. Where some may see affirmative action as opportunity others will argue that it may limit their opportunities. However, our political officials are the forerunners for the developing and enforcing of an equitable program. Neither the Democrats nor Republicans collectively endorses affirmative action entirely. Both parties agree there need to be some changes with the current program and it is time to reevaluate the affirmative action program. Although many Americans have benefited from affirmative action, the program has strayed away from its original intent. There is no doubt that affirmative action will remain a strong political issue in the future. Political officials will continue using affirmative action as a technique to lure in their voters. Consequently, the current affirmative action program will remain in effect unless someone with the authority takes the initiative to develop a program more appropriate for this era.

PART III

FUTURE

CHAPTER 5

ASSESSING AFFIRMATIVE ACTION PROGRAMS

"The best executive is the one who has sense enough to pick good people to do what needs to be done, and self-restraint enough to keep from meddling with them while they do it." Theodore Roosevelt (Maxwell 1994)

This chapter focuses on assessing affirmative action programs. I will first discuss some opinions on the current issues involving affirmative action programs. Additional discussion will lead into goals and glass ceilings within government organizations and corporate America. Some organizations will not admit they establish goals or glass ceilings. However, the demographics within their organization may display a different picture. I will explore some arguments regarding why these goals may appear to exist.

Furthermore, I will discuss the importance of workforce diversity and the challenges personnel managers has in achieving and maintaining workforce diversity with their organizations. I will discuss methods for obtaining workforce diversity and the trend of moving from affirmative action to workforce diversity.

Assessment of Affirmative Action Programs

Tammy Mann discusses the current myth that the public no longer supports affirmative action. This myth was primarily based on public opinion polls that offered a choice between affirmative action as it currently existed or no affirmative action. When intermediate choices were added, surveys showed that most people wanted to maintain some form of affirmative action. For example, a recent Time/CNN poll found that 80%

of the public felt "affirmative action programs for minorities and women should be continued at some level. The public opposed quotas, set asides, and reverse discrimination." For instance, when the same poll asked people whether they favored programs "requiring businesses to hire a specific number or quota of minorities and women," 63% opposed such a plan. As suggested by these results, most members of the public oppose extreme forms of affirmative action that violate notions of procedural justice. Consequently, they do not oppose affirmative action itself. (Mann 1997)

Reverend Jesse Jackson believes that affirmative action undermines the self-esteem of women and racial minorities. Although affirmative action may have this effect in some cases, interview studies and public opinion surveys suggest that such reactions are rare. For instance, a recent Gallup poll asked employed black and white women whether they had ever felt that others questioned their abilities because of affirmative action; nearly 90% of respondents said no. Jackson states that this is understandable since white men, who have traditionally benefited from preferential hiring, do not feel hampered by self-doubt or a loss in self-esteem. In many cases affirmative action may actually raise the self-esteem of women and minorities by providing them with employment and opportunities for advancement. There is also evidence that affirmative action policies increase job satisfaction and organizational commitment.

Jackson continues that affirmative action means support for preferential selection procedures favoring unqualified over qualified candidates. Most supporters of affirmative action oppose this type of preferential selection. Preferential selection procedures can be ordered along the following continuum:

- *Selection among equally qualified candidates.* The mildest form of affirmative action selection occurs when a female or minority candidate is chosen from a pool of equally qualified applicants (i.e., students with identical college entrance scores). Survey research suggests that three-quarters of the public does not see this type of affirmative action as discriminatory.
- *Selection among comparable candidates.* A somewhat stronger form occurs when female or minority candidates are roughly comparable to other candidates (i.e., their college entrance scores are lower, but not by a significant amount). The logic here is similar to the logic of selecting among equally qualified candidates; all that is needed is an understanding. For example, predictions based on an SAT score of 620 are virtually indistinguishable from predictions based on an SAT score of 630.
- *Selection among unequal candidates.* A still stronger form of affirmative action occurs when qualified female or minority candidates are chosen over candidates whose records are better by a substantial amount.
- *Selection among qualified and unqualified candidates.* The strongest form of preferential selection occurs when unqualified female or minority members are chosen over other candidates who are qualified. Although affirmative action is sometimes mistakenly equated with this form of preferential treatment, federal regulations explicitly prohibit affirmative action programs in which unqualified or unneeded employees are hired (Bureau of National Affairs, 1979).

Jackson further states that we are currently experiencing attempts to institute a scorched earth approach to history. In a democracy, we do not burn the books and start over. We must develop policy and law based on the realities within our society to include our

discriminatory past, and the racism and sexism that continue to taint our institutions. From the inception of this nation, white Anglo-Saxon male land owners were accorded preferential status. From the right to vote to the right to own land, take out loans or attend universities, women and people of color were locked out of these enriching opportunities. At the same time, the Homestead Act and land reclamation laws provided millions of acres of oil and soil rich land to white males, awarded solely because of the circumstances of birth. Jackson continues, that after two hundred fifty years of slavery, one hundred years of apartheid, and forty years of continuing discrimination, we cannot turn a blind eye to our past and enact a color blind code of justice. The unbroken record of race and gender discrimination warranted the conservative legal remedy of affirmative action. Jackson believes that if affirmative action truly meant group preferences, African-Americans would have long ago received the proverbial forty acres and a mule; Native Americans would be governing vast portions of the country; and women would be heading a majority of the nation's corporations. When we consider what true reparation for past discrimination entails, leveling the playing field from this point on is a conservative remedy. Calls for color and gender blind laws are seldom accompanied by policies truly aimed at outlawing discrimination. Rather, they generally follow statements denying the pervasive nature of discrimination in our society. (Jackson 1996)

Jackson explains that race and gender conscious programs were created precisely because of the existence of past and present discrimination based on race and gender. He believes that our goal must be to attain a race and gender inclusive society, not one of race and gender neutrality.

The U.S. legal system has historically used race cures to heal race cancer. The highest law of the land, the U.S. Constitution, codified the disease of racism, counting blacks as three-fifths human. In response to the Dred Scott decision that blacks had no rights that white men were bound to respect, and Plessy v. Ferguson's separate but equal mandate for apartheid, the Supreme Court offset race exclusion with race inclusion in Brown v. The Board of Education. The Civil Rights Act of 1964 imposed penalties for individual acts of discrimination, combating negative behavior with negative action. In 1965, Lyndon Johnson recognized that positive or affirmative action was necessary to overcome the shackles of the discriminatory past. (Jackson 1996)

The civil rights gains were largely achieved during times of relative economic health, prosperity, and growth. During the late 1960s and early 1970s, when affirmative action plans were implemented, these programs enjoyed widespread support and enforcement. Jackson believes that women and people of color of all income levels benefited from affirmative action programs. (Jackson 1996)

Goals and Glass Ceilings

There are various approaches to affirmative action, but the use of quotas and goals became fairly widespread as the most useful device to ensure compliance with the executive order as applied to federal contracting. Eventually, the courts came to regard the Civil Rights Act as requiring similar procedures to implement the intent of Congress. The use of quota systems and implementation goals became a preferred means of correcting deficiencies where they were known to exist and to demonstrate to the government that a company was making a "good faith" effort to comply with equal opportunity legislation. (Carlton 1997)

In 1989, the Department of Labor launched a program called the "Glass Ceiling Initiative," which examined the issue of a glass ceiling in nine Fortune 500 companies.

The results of this study are as follows:

- There was a glass ceiling or level beyond which very few minorities and women advanced. In fact, the level was lower than the researchers has expected. Much of the glass ceiling literature focuses on the executive suite. The critical mass of minorities and women were employed well below that level. Furthermore, the study found that minorities excelled at levels lower than women.
 - There was a lack of corporate strategies to achieve equal employment opportunity practices. Monitoring for equal access and equal opportunity was more frequently perceived as the responsibility of someone in the human resources office than as a collective corporate responsibility.
 - Minorities and women were largely employed in staff positions instead of line positions where there was more of a career track to the executive suite and greater bonus and reward eligibility.
 - Minorities and women did not have as much access as other employees to career development practices and credential-building experiences, including advanced education and career-enhanced assignments such as membership on corporate committees, task forces, and special projects.
 - Recruitment practices prevented a disproportionately large number of qualified minorities and women from being considered for management positions.
- Futhermore, all of the executive search firms were employed by the companies.

Additionally, recruitment practices such as word of mouth announcements and employee referrals resulted in a lack of qualified minority and female applicants.

- There were inadequate provisions within the companies for monitoring the total compensation systems that determined salaries, bonuses, incentives, and perks to ensure nondiscriminatory practices. (Henderson 1994)

This next section addresses glass ceilings and how they affect women in corporate America. Many women have paid their dues, even a premium, for a chance at a top position, only to find a glass ceiling between them and their goal. The glass ceiling is not simply a barrier for an individual, based on the person's inability to handle a higher-level job. Rather, the glass ceiling applies to women as a group who are kept from advancing higher.

The pressure is in being a minority, set apart by gender before anything is said or done, and in being responsible for representing women as a group because there is no one, or few others, to share that responsibility. In addition to being scrutinized, a number of women executives are also unwelcome. "There is still the good ole boy feeling in senior management here," remarked a higher-level executive.

We are at a crossroads in corporate America. Women are stuck below the level of challenge that will satisfy them and fully use the resource they represent to companies. These women, and the executives who want to solve the problem, don't know what to do. They once thought that the increased number of women in middle management would push some into senior management, but that is not happening. Something else is needed if we are to make everyone's investment pay off. People are getting restless, according to

Jane Evans, a managing partner of Montgomery Securities, in a speech to the New York Financial Women's Association:

Although I thoroughly enjoy the success I have achieved, I am dismayed that so few other women can claim to be making it in the business world. For years, I have felt that it would be my generation that would bring true equality for men and women to the workplace. Contrarily, I find the eighties to be a dangerous and precarious period because corporate and government leaders are beginning to perceive that an investment in the training and leadership development of women is unlikely to yield the same return as an equivalent investment in men.

The glass ceiling may exist at different levels in different companies or industries. Even in more progressive companies, it is rare to find women at the general management level. The general management level can mean having to deal with the development, manufacture, sales, and marketing of a product. The product can range from a new type of toilet tissue to a new type of credit card. Or a general manager might be in charge of a portfolio of products, each with its specific market and use. General managers in this situation might be responsible for coordinating product development, manufacture, sales, marketing, and overall business strategy for tens or hundreds of products. A position at this level represents a major and difficult transition in responsibility. In large corporations, these jobs represent less than one percent of the entire workforce. In a corporation with fifty thousand employees, fewer than five hundred people are at this level. It is difficult to break through the glass ceiling, but an increasing number of women are doing so. (Morrison 1987)

Although the federal government has achieved unprecedented diversity in its labor force, achieving representation across agencies and throughout their hierarchies remain two of the greatest challenges to contemporary personnel administration. Women hold about 25 percent of the supervisory positions and 11 percent of the senior executive positions in the federal government (U.S. Merit Systems Protection Board, 1992). Minorities hold only 13.8 percent of the middle management positions and only 8.1 percent of the senior-pay-level positions in federal executive agencies (U.S. Office of Personnel Management, 1992). Agencies such as the Department of Transportation, in turn, employ only 23.89 shares (percent) of women, while the Department of Interior employs only 5.11 shares of African Americans (Cornwell and Kellough, 1994). Overall, unrepresentative agencies and hierarchies can prevent public programs from being administered in a manner sensitive to the perspectives of clienteles and the general public. Confronted with glass ceilings, female and minority public employees are also denied the economic and psychological benefits associated with higher level positions. (Baldwin 1996)

Norman Baldwin recently investigated the promotion record of the U.S. Army to examine the extent which women and minorities are represented in the Army's promotion process at the middle management ranks, and then examine the promotion rates of women and minority officers over time and relative to men and caucasians. He concluded that the Army promotes women and minorities at progressively higher or lower rates as rank increases.

Although the Army has instituted various forms of affirmative action since the mid-1970s (Wilson 1994), the programs have been relatively unaggressive. Current policy

increases the number of women and minorities on promotion boards and encourages promotion board members to select women and minorities in proportion to their numbers in the zones of consideration. When affirmative action goals are not met, the files of passed over women and minorities are reviewed by board members to determine if they contain any indication of personal or institutional discrimination. If discrimination is detected, board members are expected to re-evaluate the files. Although Army exigencies and political sentiments may justify such policies, they are less aggressive than programs targeting women and minorities for promotions or for training and work assignments essential for promotions. (Baldwin 1996)

The men, women, caucasians, and minorities promoted as percentages of the officers promoted in all groups are presented in Table 5-1. The men, women, caucasians and minorities considered for promotion as a percentages of the officers considered for promotion in all groups are also presented in Table 5-1. This data exposed the broader composition of the Army officer's corps and provided a general test for gender, racial, and ethnic imbalances.

The data in Table 5-1 indicates that, relative to their population cohorts (See Table 5-2), women and minorities are underrepresented in the Army's promotion process. Table 5-1 further indicated that the number of men and caucasians promoted and considered for promotion as percentages of the total officers promoted and considered for promotion increased with rank. By contrast, the same ratios for women and minorities decreased dramatically with rank.

Table 5-1
Percentage of Total Officers Promoted and Considered for Promotion by Gender, Race, and Ethnicity, 1980-1993

Rank	Minorities				Asian and		Native	Other/	
	Men	Women	Caucasians	Combined ^a	Blacks	Hispanics	Pacific Islanders	Americans	Unknown
Captain									
Promoted	88.4 ^b	11.6	82.3	17.7	13.0	1.6	0.9	0.2	2.0
Considered	88.3	11.7	81.4	18.6	13.6	1.8	0.9	0.2	2.0
Major									
Promoted	93.7	6.3	85.8	14.2	10.5	1.4	0.8	0.2	1.3
Considered	93.5	6.5	84.3	15.7	11.5	1.8	0.8	0.2	1.4
Lieutenant Colonel									
Promoted	97.4	2.6	92.1	7.9	5.5	1.0	0.6	0.2	0.6
Considered	97.3	2.7	93.4	6.7	6.1	1.2	0.7	0.2	0.7
Colonel									
Promoted	99.2	0.8	93.5	6.5	4.6	0.9	0.6	0.1	0.3
Considered	99.1	0.9	93.4	6.7	4.6	1.0	0.5	0.1	0.4
Increase/Decrease ⁱⁱ									
Promoted	12.2	-93.1	13.6	-63.3	-64.6	-43.7	-33.3	-50.0	85.0
Considered	12.2	-92.3	14.7	-64.0	-66.2	-44.4	-44.4	-50.0	-80.0

^a Blacks, Hispanics, Asian/Pacific Islanders (1981-1993), Native Americans (1981-1993) and Other/Unknown combined.

^b This Percentage reflects the ratio of 41,800 males promoted to captain to 47,271 total officers promoted to captain.

^c Considered refers to officers who have served the time period in the preceding ranks required for promotion to the next rank.

^d Percentage increase or decrease from captain to colonel.

Source: Division, Office of Deputy Chief of Staff for Personnel of the Army, Pentagon.

The data in Table 5-1 indicate that, relative to their population cohorts (see Table 5-2), women and minorities are underrepresented in the Army's promotion process. Table 5-1 further indicates that the number of men and caucasian promoted and considered for promotion as percentages of the total officers promoted and considered for promotion increased with rank. By contrast, the same ratios for women and minorities decreased dramatically with rank.

The officers promoted as a percentage of the officers considered for promotion in each gender, racial, and ethnic group investigated are presented in Table 5-3. The cumulative promotion rates are also shown in Table 5-3. These rates reflect the product of a

Table 5-2
Gender, Race, and Ethnicity Population Proportion

Race/Ethnicity/Gender	Percentage of Population
Men	48.8
Women	51.2
African American	12.4
Asian/Pacific Islanders	3.2
Caucasians	83.6
Hispanics *	9.3
Native Americans	.8

* According to the source, Hispanics may be any race.

Source: Statistical Abstracts of the United States (113th ed.), p.14.

promotion rate at a particular rank and the rates at the preceding ranks. The male rates at all ranks (Table 5-3). Moreover, comparisons of women considered for promotion with women promoted at the previous rank indicated women are leaving the Army at high rates. The table indicates that caucasian promotion rates exceeded the promotion rates for individual minorities at all ranks except colonel where Asian and Pacific Islander, and Native American rates were higher. The table further indicates that the promotion criteria of the Army had an adverse impact on Hispanics and other/unknowns at the rank of colonel. The cumulative promotion rates in Table 5-3 indicated adverse impacts beginning at the rank of major for Hispanics. All minorities except Asian and Pacific Islanders experienced cumulative adverse impacts at the lieutenant colonel and colonel ranks. None of the promotions rates in Table 5-3 indicated women experience adverse impacts relative to men.

Table 5-3 Aggregate Promotion Rates for Males, Females, Caucasian, and Minority Officers, 1980-1993^a									
Promotion to:	Men	Women	Caucasians	Minorities ^b Combined	Blacks	Hispanics	Asian and Pacific Islanders ^c	Native Americans	Other/ Unknown
Captain									
Rate (%)	90.3	89.1	91.1	86.0	86.2	82.9	84.6	84.3	88.0
Promoted	41,800	5,471	38,912	8,359	6,138	768	416	102	935
Considered ^d	46,277	6,141	42,694	9,724	7,122	926	492	121	1,063
Major									
Rate (%)	72.7	69.6	73.8	65.8	66.1	59.9	69.3	66.1	67.7
Promoted	22,024	1,470	20,155	3,353	2,461	340	183	39	315
Considered	30,282	2,113	27,312	5,097	3,722	568	264	59	465
Lieutenant Colonel									
Rate (%)	68.2	67.3	68.9	60.2	60.6	57.2	63.4	63.2	58.3
Promoted	15,514	422	14,678	1,258	870	155	102	36	91
Considered	22,763	627	21,302	2,088	1,436	271	161	57	156
Colonel									
Rate (%)	45.1	40.9	45.1	44.1	45.1	40.3	50.6	45.5	32.3
Promoted	6,742	56	6,356	448	316	58	41	10	20
Considered	14,964	137	4,103	1,015	701	144	81	22	62
Cumulative ^e (%)	20.2	17.1	20.9	15.0	15.6	11.4	18.8	16.0	11.2
^a Rates reflect the ratio of the total officers promoted to total officers considered for promotion between 1980 and 1993. They are not average promotion rates. ^b Blacks, Hispanics, Native Americans, Asian/Pacific Islanders, and Other/Unknown combined. This total includes 1980 data that combine Asian/Pacific Islander and Native American statistics. ^c Asian/Pacific Islander and Native data are 1981-1993 because in 1980 the army combined data on these groups. ^d Considered refers to officers who have served the time period in the preceding ranks required for promotion to the next rank. ^e Rate reflects adverse impact (i.e. a promotion rate less than 80% of the rate of the group with the highest rate at each rank).									
Source: Division, Office of Deputy Chief of Staff for Personnel of the Army, Pentagon.									

The study indicates those promoted and considered for promotion in the Army are disproportionately men and caucasian. Men and caucasian disproportion's also increase with rank. The study further indicates that the Army promotes men at higher rates than women and caucasians generally at higher rates than minorities. The study indicates male-female and caucasian-minority promotion rate differences generally do not increase consistently with rank. The findings from the present study are consistent with the majority of findings from promotion studies on minorities in public organizations. Minorities are generally promoted at lower rates than the majority. (Baldwin 1996)

Workforce Diversity

Melinda Calton believes that it is important for employers to know the difference between affirmative action, valuing diversity, and managing diversity. Affirmative action refers to legally mandated written plans and statistical goals for recruiting, training, and promoting specific under-represented groups. Valuing diversity evolves around moral and ethical imperatives to recognize and appreciate culturally diverse peoples. Managing diversity emphasizes managerial skills and policies needed to optimize every employee's contribution to the organizational goals.

A diverse organization brings value to a government and enhances existing organizational initiatives. Diversity also helps managers understand who are our customers and residents. Our workforce should reflect those residents and community members. (Carlton 1997)

If affirmative action is going to work for the next generation of American women and minorities, employers should be encouraged to view affirmative action as a bottom line issue. Diversity is our world, and we must embrace it so that we can maintain our role as the professional leaders of urban America.

We can work together in a manner that appreciates diversity as a tool of strength, or we can have a decisive community based solely on numbers. Rather than arguing about how to cut the pie, we as managers must shift our focus to respecting differences as well as individuality. This sort of paradigm shift in organizational culture will position an organization (1) to come up with strategies to develop the full potential of all its employees, resulting in a more productive workforce, and (2) to appreciate that a diverse

Table 5-4
Comparing Affirmative Action, Valuing Differences, and Managing Diversity

Affirmative Action	Valuing Differences	Managing Diversity
Quantitative. Emphasis is on achieving equality of opportunity in the work environment through the changing of organizational demographics. Progress is monitored by statistical reports and analyses. Legally driven. Written plans and statistical goals for specific groups are utilized. Reports are mandated by EEO laws and consent decrees. Remedial. Specific target groups benefit as past wrongs are remedied. Previously excluded groups have an advantage. Assimilation Model. Model assumes that groups brought into the system will adapt to existing organizational norms. Open doors. Efforts affect hiring and promotion decisions in the organization. Resistance. Resistance is due to perceived limits to autonomy in decision many and perceived fears of reverse discrimination.	Quantitative. Emphasis is on the appreciation of differences and the creation of an environment in which everyone feels valued and accepted. Progress is monitored by organizational surveys focused on attitudes and perceptions. Ethically driven. Moral and ethical imperatives drive this culture change. Idealistic. Everyone benefits. Everyone feels valued and accepted in an inclusive environment. Diversity Model. Model assumes that groups will retain their own characteristics and shape the organization as well as be shaped by it, creating a common set of values. Open attitudes, minds and the culture. Efforts affect attitudes of employees. Resistance. Resistance is due to a fear of change, discomfort with differences, and a desire to return to the "good old days."	Behavioral. Emphasis is on building specific skills and creating policies that get the best from every employee. Efforts are monitored by progress toward achieving goals and objectives. Strategically driven. Behaviors and policies are seen as contributing organizational goals and objectives such as profit and productivity, and are tied to rewards and results. Pragmatic. The organization benefits: morale, profits and productivity increase. Synergy Model. Model assumes that diverse groups will create new ways of working together effectively in a pluralistic environment. Opens the system. Efforts affect managerial practices and policies. Resistance. Resistance is due to denial of demographic realities, of the need for alternative approaches, and of the benefits of change. It also arises from the difficulty of learning new skills, altering existing systems, and finding the time to work toward synergistic solutions.
Source: Adapted from <i>Managing Diversity: A Complete Desk Reference and Planning Guide</i>, by Lee Gardenswartz and Anita Rowe. Copyright 1993, Business One Irwin.		

workplace is more competitive in an increasingly diverse marketplace and global economy. (Carlton 1997)

During the 1980s, when allocation issues were paramount, and where the political tide seemed to turn against social equity, affirmative action suffered. Consultant Terry Simmons says the following about the future of affirmative action:

When people first thought about equal opportunity, it was a great concept. The same with affirmative action. You know, taking positive steps. But most organizations implemented them in a negative way, a defensive way: 'Watch out

for the law.' Diversity is a movement away from strictly legalistic approaches and toward more of a productivity and a maximization of resources approach.

In other words, the motive to implement affirmative action was compliance with the law. In the future, economic and demographic pressures may enhance workforce diversity because it makes good business sense.

This transition from affirmative action to workforce diversity sees the social differences in our society as assets, as sources of creativity, rather than sources of conflict. It transforms them from political issues of equity into business and administrative issues having to do with productivity and efficiency. Simmons continues:

A different style and a different way of thinking are actually healthy because they will allow us to challenge our process. If you can manage that in a positive way, then this challenge is good because it helps you get new ways of problem solving. It adds to your creativity. It helps you understand the views of the marketplace, which are different from what your traditions happen to be. So if managed well, this diversity can create a rebirth of thinking in an organization and revitalize it from the inside out.

In large urban areas, the composition of the labor force and the increasing political pressure of racial and ethnic groups should open access to public jobs even wider. From a values perspective, we may see increasing alliances of responsiveness, representation, efficiency, and social equity. While the courts will continue to orient themselves to the protection of individual rights, demographic realities will force legislatures and administrative agencies to respond to representation and the broader political concern of workforce diversity. Further, increasing emphasis on customer satisfaction in multigroup

communities may very well link workforce diversity to increased productivity. While workforce diversity in an era of affirmative action in large measure has been forced upon employers, in multicultural community, it may be seen as a requisite for productivity. (Klingner 1993)

The challenge of getting women and minorities into senior-level management positions is difficult. While the proportion of women and minorities in the workforce has increased significantly during the past decade, few of them have made it to the top. Specifically, women and minorities account for more than 50 percent of the American workforce but they comprise less than five percent of senior management positions.

Along with shifts in organization demographics come additional competition. Some white male employees must now compete against people they did not consider rivals before, mainly women, blacks, hispanics and asians. Even though white males still control most of the managerial positions, many white males sense an impending loss of job entitlements. They are "like the firstborn in the family, the ones who have had the best love of both parents and never forgave the second child for being born." (Henderson, 1994)

Summary

The success of affirmative action programs are dependent upon many different variables. Many corporations and government organizations establish goals or glass ceilings that limits the number of minorities and women who may be promoted to senior leadership positions. Although this method may be considered inappropriate, this strategy has been successful for many corporations and government organizations. As Jesse Jackson mentioned, race and gender related programs were developed solely

because of past discrimination. Affirmative action is an attempt to make what was wrong in the past right today. Individuals who have benefited from affirmative action may appear to have high self-esteem and are confident in employment opportunities and advancement.

Workforce diversity aids with communicating with different ethnic groups that may be represented in the population. Additionally, employees will have a better understanding of each other's heritage and cultural beliefs. Workforce diversity is no trend, but instead it is the present and future of the U.S. Since the U.S. is made of a diverse population that includes individuals from many different nations and ethnic groups, I believe the workforce should be represented in the same manner. Additionally, we must take the time to understand these different subcultures, norms, values and beliefs of all employees. Finally, we must integrate these value systems into our work ethics.

CHAPTER 6

AFFIRMATIVE ACTION SURVEY ANALYSIS

"One who never walks except where they see another person's tracks will make no discoveries." Ralph Nader (Maxwell 1994)

This chapter is analysis of my affirmative action survey. I conducted a survey with 100 different municipalities all across the country. I mailed the surveys to town and city managers in smaller communities, and human resources directors in the larger cities. The reason I mailed the survey to these individuals was to identify the perception and opinions of affirmative action programs from the leaders who implement or enforce the program within government organizations.

I conducted the survey after reading some interesting statistics regarding affirmative action related issues in the public sector:

- From 1979 to 1982, women's wages increased 119 percent.
- More than half of the present U.S. workforce consists of minorities, immigrants, and women.
- Minorities and women will account for 85 percent of the increase in the workforce through the end of the decade.
- Although blacks make up 12.4 percent of the population, they are only 3.3 percent of the nations' lawyers, 4.2 percent of its physicians, and 3.7 percent of its engineers. In 1984, blacks made up 1.1 percent of all county and city managers, increasing to 1.6 percent in 1994.
- Just 9.5 percent of county and city managers in 1984 were women, increasing to 12.4 percent in 1994.

- White males make up 37 percent of the U.S. population but are 65 percent of the physicians, 71 percent of the lawyers, and 97 percent of all school superintendents; they hold 58 percent of the wealth.
- In Michigan, women and children represent 70 percent of all the poor, and women hold fewer than 5 percent of executive-level positions. (Calton 1997)

Profile of Survey Participants

This survey examines the perceptions regarding the effectiveness of affirmative action program within government organizations. I conducted a survey of 100 different municipalities with populations as small as 2,500 to populations with more than 500,000. The surveys were mailed to cities in states as far east as South Carolina; as far west as California; far north as Maine; and as far south as Florida. I focused on the entire continental United States in order to acquire a perception from different regions and cultures in the United States.

The 100 surveys were mailed to the attention of city or county managers in the smaller municipalities and to the human resource managers of larger municipalities. The purpose of the survey was to determine the public opinions and perception of the public administrators regarding affirmative action in government. After analyzing the results of the survey, I could find no specific pattern from the respondents. Each respondent answers the questions differently. I selected the questions based on information I wanted to examine regarding public sector employment, information I could not find through research, and information that would complement this thesis. Most of the questions are subjective and required a "yes" or "no" response.

Each municipality varied in population size from as small as 2,500 to as large as one million. A total of 40 percent of the surveys were returned for analysis. The following is a population size of the municipalities that responded to the survey:

10,000 or less	8
10,001 - 25,000	14
25,001 - 50,000	4
50,001 or more	14

Since I wanted to ensure that the respondents clearly understood the questions in the survey, I enclosed an "explanation of terms" as a ready reference. The following is a copy of that enclosure:

Explanation of Terms

Affirmative Action Plan. Affirmative action plan will identifies the underutilization of qualified minorities and women in a relevant labor force, establish a full utilization goal, develop a plan for achieving full utilization as a goal and makes reasonable progress toward full utilization.

Affirmative Action Personnel System. A personnel system primarily responsible for implementing human resource acquisition decision rules emphasizing social equity for protected classes.

Demographics. The percentage of each minority group and women with a population.

Affirmative Action Program. There are four types of Affirmative Action Programs:

(1) Passive nondiscrimination. This involves a willingness, in a decision about hiring, promotion, and pay, to treat the races and sexes alike.

(2) Pure affirmative action. A concerted effort is made to expand the pool of applicants so that no one is excluded because of past or present discrimination.

(3) Affirmative action with preferential hiring. The company systematically favors women and minorities in actual decisions about hiring.

(4) Hard quotas. A specific number of minorities and women must be hired.

Preferential Treatment. Providing special consideration to specific groups for employment or promotion.

Council-Manager Form of Government. The council-manager form of government combines the strong political leadership of an elected mayor and council with the strong managerial expertise of the manager.

Consequently, 85 percent of respondents use the council-manager form of government. The council-manager form of government combines the strong political leadership of an elected mayor and council with the strong managerial expertise of the manager. In the council-manager form of government, the city or county manager is responsible for hiring department heads, administrative personnel, and other employees. The manager is further responsible for supervising top appointees. I used the question to gauge the level of authority the manager possesses regarding hiring practices. The manager in the council-manager form of government has more flexibility with hiring minority managers that may create internal norms. Therefore, 85 percent of the respondents were from municipal governments where the city/town manager was responsible for the hiring of minority and women into the middle and senior management positions.

Analysis of Survey

This section analyzes each question in the survey. Although most of the questions required a "yes" or "no" response, many of the responses appeared defensive. The survey was not intended to require a great deal of time from the participants. Additionally, the questions were not intended to be controversial. Most of the surveys were returned within the four weeks provided. However, I received my last survey eight weeks after I mailed the surveys.

Question: Does your municipality have an affirmative action plan?

In regards to this question, 78 percent of the respondents indicated that their municipality has an affirmative action plan. Consequently, 22 percent of the respondents said their municipality did not have an affirmative action plan.

Therefore, a majority of municipalities have an affirmative action plan within their organization. This is certainly a positive response because this means that most government organizations are aware of affirmative action programs and have taken the time to develop a plan.

Question: If yes, do you feel your affirmative action plan is effective?

The question was purposely intended to be subjective in nature. Furthermore, my intent was to solicit an honest answer from the professionals. The survey revealed that 77 percent of the respondents with affirmative action plans believe that their plan is effective. Nevertheless, a surprising 23 percent of the respondents did not feel their affirmative action plan is effective.

Again, this particular response is based solely on the individual's perception of their municipality. Hopefully, the 23 percent of the municipalities that felt their programs was not effective are taking the appropriate measures toward greater effectiveness.

Question: Does your municipality use the affirmative action personnel system?

A total of 73 percent of the respondents currently uses the affirmative action personnel system. Only 27 percent of the respondents do not use the affirmative action personnel system. I was personally surprised so many municipal government organizations used the affirmative action personnel system because the system promotes equity through hiring

practices. Administrators using the affirmative action personnel system tend to employ a more diverse workforce.

Question: Are the demographics of the leaders balanced with the demographics of the employment population?

Only 28 percent of all respondents believe their leaders are balanced with demographics of the employment population within their organization. Another 65 percent of the respondents said the demographics of the minority and women leaders is lower than the demographics of the employment population. Seven percent of the respondents did not respond to this question. I felt that this was an important question because it would confirm or deny my belief that there are disparities of minorities and women in leader positions in government organizations.

Hence, 23 percent of the respondents believed the reason there are few minorities and women in municipal leadership is due to one of the following:

- Not interested in public management.
- Have a lack of support.
- Lack of good outreach programs.
- Do not see career opportunities.
- Lack of commitment from the highest level of management.
- Bureaucracy stifles innovative approaches.

On the other hand, 13 percent of the respondents indicated that minorities and women are well represented in leadership positions within their municipality.

Question: Do you think there is a need for affirmative action programs within your municipality?

Some 80 percent of the respondents feel there is a continuing need for affirmative action programs within their organization. Only 18 percent of the respondents do not believe there is a need for affirmative action programs within their organization. Also, two percent of the respondents did not respond to this question.

Question: Do you feel there is a need for affirmative action in government?

Consequently, I received the same response for this question as I did for the previous question. However, 80 percent of the respondents believe there is a need for affirmative action in government, and 18 percent of the respondents do not feel there is a continuing need for affirmative action in government respectfully. Again, two percent of the respondents did not respond to this survey.

Question: Do you think minorities and women should receive preferential treatment?

A surprising 80 percent of the respondents believe that minorities and women should receive preferential treatment. Another 15 percent believe there is no longer an existing need for preferential treatment for minorities and women. Only five percent of the respondents did not respond to this question.

One respondent from Philadelphia, Pennsylvania explained that, "minorities particularly have not always had the educational and social preparation that would enable them to compete in the same arena as whites. Additionally, in government positions, promotions are often granted because of political, social and economical connections rather than qualifications."

Another respondent from Florence, South Carolina believes, "the socialization and education processes are ineffective in preparing them (minorities and women) in a

"competent" manner to acquire and demonstrate competent KSAs. This shortfall therefore lowers their performance standards."

Question: Do you think the U.S. is a better place because of affirmative action?

While 65 percent of the respondents believe the U.S. is a better place because of affirmative action, 15 percent of the respondents do not believe that the U.S. is a better place because of affirmative action. The remaining 20 percent of the respondents did not answer this question.

The biggest surprise was that 20 percent did not answer this question. Unfortunately, I will never know why they did not respond to this question. Maybe they felt it was inappropriate to provide a "yes" or "no" response to this particular question. However, I would infer that it probably has something to do with the controversial arguments in regards to the affirmative action issues displayed by the media. Much of the controversy associated with affirmative action is centered around events such as law suits and major universities changing their affirmative action policies. These events may display negative connotations regarding affirmative action programs in the U.S.

Question: Why do you think there are few minorities and women in municipal leadership?

A respondent from Cincinnati, Ohio believes, "the reason there were few minorities and women in municipal leadership evolve more around the history and social issues of our society, i.e., the values that families transfer from generation to generation."

Correspondingly, another respondent from Rocky Mount, North Carolina believed that, "local government, like the corporate world, has always been favorable to white middle class males. Therefore, minorities and women are not given the same opportunities."

"It takes time to gain experience to move into leadership positions", replies one respondent from Dulles, Virginia. "Historically, minorities and women have been held back. Therefore, they are in a current fight with the seniority system where more experienced workers are available. Respectively, minorities and women are not as qualified by virtue of years of experience and levels of responsibility."

Question: Would you recommend changes to the existing affirmative action program? If so explain.

A surprising 93 percent of the respondents said that they would recommend changes to the existing affirmative action policy. I received many different responses to this question. These responses included:

- Improve outreach programs with less emphasis on bureaucracy.
- Ensure that the program does not exclude anyone based on their sex and focus on all persons based on merit.
- Eliminate preferential treatment.
- Only qualified minorities and women should receive preferential treatment.
- The affirmative action recruiting methods should be employed to select from among all qualified candidates regardless of race or gender.
- The private, public and governmental organizations should be involved in determining an equitable labor force.
- Allow all applicants to be treated fairly.
- More emphasis throughout our educational system on civics, patriotism and the governmental structure and the necessity to protect democracy.
- More intense search.

- Define the relevant labor market and establish workforce goals on updated census.
- Return to legal decisions that allowed remedial hiring.

Findings

None of the results of the surveys had identical responses. I found no particular pattern from any group of respondents. Collectively most of the respondents felt that there is a need for affirmative action. However, many respondents are concerned with the preferential treatment process. The general consensus is that preferential treatment does not consider the qualifications of all personnel.

Although many of the respondents appeared somewhat defensive with their responses, I believe the answers were honest and accurate to their knowledge. Almost all of the respondents took advantage of the free text portion provided at the bottom of each survey. Most of the respondents offered a personal opinion of affirmative action in government.

I would have liked to have studied a series of focus groups comprising of the same participants to receive further feedback regarding their responses. This forum would have provided greater detail for even further analysis. The focus group would have permitted each individual to personally defend their position while generating further discussion. Unfortunately, this type of study would require thousands of dollars just to bring all of the participant together. However, the purpose of my survey was to gather opinions regarding affirmative action in government, and this survey clearly met my expectations.

Summary

Although only 40 percent of the recipients responded to the survey, there were enough participants to obtain a valid analysis. I was soliciting subjective opinions regarding affirmative from the professions who interact with the affirmative action program daily.

Since the respondents came from different states all over the country, I believe the results of this survey provided an accurate assessment of the perceptions of affirmative action in government. Most of the respondents collectively agreed that there should be some changes made to the existing affirmative action program. Most of the recommended changes to affirmative action are associated with eliminating the preferential treatment for minorities and women. Most of the respondents wanted a program which basically hires people on the basis of their qualifications rather than on the sole basis of being a minority or a woman.

Although, the number of minority and women city and county managers is increasing, the numbers still remain significantly low. Therefore, minorities and women remain under represented in municipal government management. Since blacks in particular account for approximately 1.6 percent of the city and county managers, I believe that it is safe to assume that maybe one of the respondents was black. Since women account for approximately 12.4 percent of city and county managers, it is therefore safe to assume that maybe five of the respondents were women. Given this information, approximately 80 percent of the respondents were white males.

CHAPTER 7

THE FUTURE OF AFFIRMATIVE ACTION

"The most pathetic person in the world is someone who has sight but has no vision." Helen Keller (Maxwell 1994)

This chapter addresses issues concerning affirmative action in the 90s. Additionally, I will discuss some issues regarding reverse discrimination, and conclude with the future of affirmative action.

Affirmative Action In The 90s

There remain concerns regarding the need for affirmative action in the 90s. After all, affirmative action was established over 30 years ago during a period of social unrest in the United States. However, since the 1960s, affirmative action has helped five million minority citizens and six million women to advance in the workplace. (Carlton 1997)

Norm Rice believes that "present efforts to repeal affirmative action are based on several general misconceptions. One is that our society, having reached a point of true equality, no longer needs programs that help government recruit and hire qualified women, people of color, and persons with disabilities. Unfortunately, there is abundant evidence, from Census Bureau data and academic studies, to news accounts and everyday experiences, that we still have a long way to go to achieve equality of opportunity for all social groups."

Another misconception is that affirmative action is based on quotas, and that, as a result, the government is hiring unqualified candidates. This view fundamentally misrepresents the reality of affirmative action in the City of Seattle. The city's affirmative action program does not establish numerical quotas for hiring decisions, nor

does it result in the hiring of unqualified candidates on the basis of gender or race. (Rice 1995)

Reverse Discrimination

The widespread use of goals or quotas to implement affirmative action that inevitably reverse discrimination would be a factor. This phenomenon occurs when a minority or woman is equally qualified when compared with a white male and is given preference over that latter for a job or promotion, or where quotas resulted in hiring minorities or women who are actually less qualified than white male applicants for the same position. (Buchholz 1992)

Affirmative action as compensation is best illustrated by the Reagan administration's view of the policy. Its stand on affirmative action was simple: affirmative action is reverse discrimination and any form of discrimination is unconstitutional. The Civil Rights Division of the Justice Department, under the leadership of William Bradford Reynolds, no longer supports the use of goals or statistical formulas, the primary characteristics of most affirmative action plans. In the courts, they argued against goals again and again. They also argued against consent decrees and court orders that require the use of goals to redress incidents of past racial discrimination. Reynolds has argued that the Constitution and 14th Amendment are color blind and that the only appropriate and effective means of fighting discrimination is with race neutral policies. Using a compensatory paradigm as guidance, Reynolds has argued that the government's policy should be to provide relief only to those individuals who have been the victims of overt discrimination. The crux of the administration's argument against affirmative action is that such programs are unjust because they do not redress specific acts of discrimination

but benefit one group at the expense of another group who are not themselves guilty of discrimination. (Bridgeport 1996)

Kevin Chapman tells the case of a fire department lieutenant who was passed over for promotion (for the second time) in favor of an African-American man pursuant to the department's affirmative action plan. The percentage of African-American men in the department meets or exceeds EEOC recommendations. The passed over firefighters are considering filing suit. What is the status of the law on reverse discrimination? What circumstances would you want to see before you encouraged someone to file a complaint?

The firefighters may have a good case under the current law. Several recent cases have upheld reverse bias cases where (1) a non-minority can show superior qualifications, test score, or seniority; (2) a minority is promoted ahead of the non-minority based solely on affirmative action grounds; and (3) there is no history of discrimination or valid consent decree or court order that can justify the reverse discrimination. If there is a consent decree or other agreement with the Equal Employment Opportunity Commission involved, or if there is a history of racial discrimination that the department is trying to rectify, that could adversely affect the likelihood of success. (Chapman 1997)

Chapman says, "discrimination is discrimination. Reverse discrimination does not exist. However, discrimination can and does exist. I like to think of discrimination as identifying a characteristic within a person that prohibits or restricts an individual from the rights they would have otherwise been afforded. With this definition in mind, people are being discriminated against everyday in some way. It is not required for any group to be a minority or majority to discriminate."

The Future of Affirmative Action

Despite what humans, especially Americans, often say, "We like to change," all humans hate to change. It doesn't take much of a cynic to recognize that what Americans mean when they say that they like to change is that they are going to enjoy watching others change while they don't themselves intend to change at all. The Chinese curse "May you live in interesting times" (roughly equivalent to the Western curse "May you burn") comes closer to expressing real human views. Interesting times are times of change, and this implies that human behavior has to change. Being told that one must change to survive is roughly equivalent to being told that one will burn. (Thurow 1996)

The future of affirmative action is uncertain. However, the headlines often flash a new controversy involving affirmative action. Even in government, we have lured away from the original intent of affirmative action and become more concerned with the goals, quotas, and glass ceilings. The legal cases in Chapter 3 is only a snapshot of the many legal cases involving affirmative action. In the future, we can expect to see more of these cases. As the settlements increase, the copycat syndrome will certainly influence more Americans to seek affirmative action cases. Additionally, more organizations will focus on promoting workforce diversity.

Melinda Carlton believes, "Inherent in the ongoing discussion of affirmative action are important facts that must be recognized. These facts are not theoretical issues surrounding affirmative action but the demographics trends in the nation's future. A report prepared by Hudson Institute has focused on major trends that will revolutionize the workforce in the near future".

Between now and 2000, the number of young workers aged between 16 and 24 will drop by almost two million, or eight percent. Although, based on current trends, the U.S. population is expected to reach 275 million by 2000, during the 1990s the U.S. population will have grown more slowly than at any time in history, with the exception of the decade of the Great Depression. (Carlton 1997)

For thirty years, affirmative action and quotas have been used to correct an apparent injustice. Thirty years is enough to correct past discrimination and now we must deal with current discrimination only. Affirmative action and quotas must end and a simple law banning all forms of discrimination should be the law of the land. No discrimination white on black, black on white, or any other group on group. A law cannot be written to control what is within the heart of any human being, therefore discrimination itself will never be eliminated entirely. But what a law can do is to ensure that the government and all of its departments and personnel shall not discriminate against any one group based on race, religion, gender, etc. Neither should a government favor, support, or give preferential treatment to any one group at the expense of another. That is what must replace affirmative action and quotas, a simple non-discriminatory, non-preferential government policy. (Santo 1997)

Affirmative action will continue to be recognized as a valid and lawful tool available to employers, governments and courts. The key question is what types and forms of affirmative will be continued. Current trends suggest that affirmative action will be subjected to a much higher level of scrutiny and skepticism by the courts.

By the year 2000, women are projected to be 47 percent of the labor force; African Americans, 12 percent; Hispanics, 10 percent; and Asians and other groups, 4 percent.

The Bureau of Labor Statistics projects that 43 million persons will join the labor force between 1988 and 2000. Approximately two-thirds of those entrants are expected to be white non-Hispanics, with Hispanics and African Americans projected to account for 15 percent and 13 percent of such entrants, respectively. Thus demographics alone may call for an emphasis on minority and female recruitment which would not have otherwise occurred. (Turner 1990)

President Clinton addresses the future of affirmative action with the following statement:

I am absolutely convinced that we cannot restore economic opportunity or solve our social problems unless we find a way to bring the American people together. And to bring our people together we must openly and honestly deal with the issues that divide us. Affirmative action is one of those issues. (Clinton 1996)

Joan Lester believes that each group wonders whether its concerns will be adequately addressed. For example, there has recently been considerable African-American resentment reported of gay (and before that, women's) appropriation of the language of the civil rights struggle. Which raises the question: Is it disrespectful of one human rights movement for another to use its imagery?

There are marked differences between the particularities of each group's struggle. Yet, to paraphrase Jesse Jackson, discrimination is discrimination. Those who suffer do find historical parallels that provide inspiration. African-Americans have frequently used the exile and eventual triumph of the Israelites as a central metaphor in their own long struggle on these shores. The arguments about black promiscuity that were thrown about

during the Civil Rights movement of the 1960s sound stunningly like the arguments used against gay men and lesbians in the 1990s.

As long as we forget that discrimination is discrimination, successive groups will be used to batter each other. One decade many whites working and middle-class people believed: All our jobs are being taken by blacks. The next decade some African-Americans believe that preferential hiring is being widely given to lesbians and gay men.

In the nineties, as lesbians and gay men begin to gain a smidgen of political power, the fear of being left behind surfaces. In order to keep this fear from becoming reality, we all have to see to it that the diversity bandwagon doesn't just briefly raise one group after another to visibility, only to cast them down after their moment in the media sun. (Lester 1994)

Lester continues, "There are lots of ways to recruit under represented people. It means developing new networks, which takes lots of time and some money, and planning ahead by, for instance, inviting promising people in for visits well before graduation, providing loan reductions, or various in-house development efforts. Furthermore, creating an positive atmosphere, both for recruitment, and its twin, retention." (Lester 1994)

Most recently a University of South Carolina Professor used a the model initiated by Lester. Professor Aretha Pigford began pushing for more minority faculty members at a school where just one in every 30 faculty members are black, compared with one in six students. "It's time we did some things to even that up," said Pigford, one of five blacks tenured in USC's College of Education.

Pigford has received a W.K. Kellogg Foundation recruiting grant that could grow to one million dollars over five years with matching funds. Pigford's program would target

black graduate students and lure them to Columbia, South Carolina with generous financial aid.

Less than five percent of all professors teaching at American colleges are black according to Ansley Abraham, head of the Compact for Faculty Diversity in Atlanta. When those who teach at historical black institutions are excluded, the number of blacks who teach at the college level is about two percent.

Pigford continues, "Colleges have attempted programs to recruit blacks in the past, however our read on them is many have not been extremely successful". Pigford's initiative goes beyond what on the surface seems to be an affirmative action program. "It's not about having bodies in the classroom," she said. "It's about having people bring in diverse points of view and showing young people there are many different ways to look at the world." (Fayetteville Observer Times 1997)

I believe we can expect more efforts similar to this in the future. The survey in Chapter 6 indicated that most people oppose preferential treatment to unqualified applicants. However, organizations who are more aggressive in their search can attract qualified minority and women applicants. Additionally, to attract certain applicants we must identify certain screening characteristics particular to that group's value system. It is important to understand that all applicants do not have the same opportunities and each applicant has something different to offer. The standards do not have to be lowered, but the standards must be created so that all qualified applicants remain competitive.

SUMMARY

Although there has been many arguments of "Reverse Discrimination", the bottom line is discrimination does not travel forward, laterally or in reverse. According to Joan

Lester, heterosexual white males make up approximately 25 percent of the U.S. population and hold more than 90 percent of the political, economic and cultural directorship positions. Efforts must be made to balance this disparity to integrate diversity within the workforce. Obtaining this diversity may appear to be at the expense of the individuals who are screaming, "Reverse Discrimination."

In the future, we will probably see more private and governmental organizations become more aggressive in supporting workforce diversity. Additional controversy will continue to arise as women and minorities rise to higher levels. Finally, employers will invest more efforts into recruiting minorities and women to obtain workforce diversity.

CHAPTER 8

CONCLUSION

"It is only as we develop others that we permanently succeed." Harvey S. Firestone (Maxwell 1994)

This chapter is a culmination of the previous chapters. I will first review the research of this thesis and the anticipated outcomes. Finally, I will provide concluding statement based on the research I conducted.

Review Of The Research

The research for this thesis was gathered from many different sources. For ten months I gathered information from library references and periodicals, newspaper articles, the internet, magazine articles and personal interviews. Additional information was gathered from public administrators through the use of a survey.

In chapter 1, we learned the history and evolution of affirmative action. Although affirmative action was officially established in 1964, my research indicates the symptoms leading to its development go further back in history. We further discussed the impact of preferential treatment in the U.S. We used the analogy of the two track runners to demonstrate how everyone does not begin at the same start point in life.

Chapter 2 discussed some of the issues involving affirmative action. Further discussion explained the adverse impact and the method for calculating the adverse impact.

The legal cases in Chapter 3 indicates the different types of situations which affirmative action cases involve. Since the development of affirmative action, the legal

profession has been challenged with defining and interpreting affirmative action. I personally believe that many of the legal cases would not have been considered if the settlements were not so financially rewarding.

We discussed the political ratifications in Chapter 4. Advocates who support or oppose affirmative action can not be linked to either the democratic or republican party exclusively. In Chapter 4, we further discussed how some of the politicians feel about affirmative action programs.

I discussed assessing affirmative action programs in Chapter 5. I discussed the myth that the public does not support affirmative action any more. A recent Time/CNN poll revealed that 80 percent of the public is still supportive of affirmative action programs. My research supported this claim with the results of my survey displaying corresponding results. The survey concluded that an overwhelmingly 80 percent of the respondents who answered the question believe the U.S. is a better place because of affirmative action. Therefore, it is safe to conclude most Americans believe that affirmative action is a good program for all Americans.

Some organizations use goals, quotas or glass ceilings in an effort to achieve workforce diversity. Establishing goals may lead to desperate attempts to recruit minorities in women through preferential treatment. The U.S. Army uses glass ceilings in the officer promotion system. This strategy ensures that minorities and women receive the same opportunities for advancement.

The survey in Chapter 6 provided valuable information regarding municipal government leadership. The most surprising response I received was that 20 percent of the respondents did not answer the following question:

Do you think the U.S. is a better place because of affirmative action?

Nevertheless, 65 percent of the respondents believe the U.S. is a better place because of affirmative action.

Finally, we discussed the future of affirmative action and reverse discrimination in Chapter 7. Although no one can predict what will actually happen in the future, one can speculate what to anticipate based on current information and trends. Arguments supporting "Reverse Discrimination" have been on the rise for the past decade because more minority and women are moving up the corporate ladder. Many of the cases that involve seniority with "reverse discrimination" are valid. Consequently, others are merely complaints when the workforce becomes more diverse and competitive.

After analyzing individual opinions of affirmative action in government and private organizations, I determined that supporters of affirmative can neither be linked to Democratic nor Republican party exclusively. Additionally, we can not link the opposers of affirmative action to any particular interest group.

Based on current progress, affirmative action programs will continue in the future despite the negative attention it is receiving. Based on this research, the majority of the respondents wants affirmative action programs to continue. However, the majority of the respondents also indicated that it is time to makes changes to the existing preferential hiring policies.

Conclusion

It is impossible to provide affirmative action to African-Americans after four hundred years of oppression. It's impossible to provide women affirmative action for hundreds of years they have been denied their rights. Since the existence of humans, men have been

dominating and ruling. However, it is realistic to expand upon the principles in which the affirmative action program was developed. These principles are equal treatment for all; consideration for all; and developing a system which establishes equitable opportunities within our society.

Joan Lester believes that "most corporations, government agencies and educational institutions are directed by whites who have typically recreated their culture within the institutions they represent, especially at senior levels. The overall environment is itself a white program, merely invisible because it is so prevalent."

In an attempt to create climates, cultures and curricula that includes others, programs are created to support the change. We've found over past generation that just opening the doors and saying, "Okay, now you can come in," doesn't work very well. The climate and structures usually does not accommodate diverse viewpoints, interests, and needs; the newcomers tend to feel isolated and eventually leave. (Lester 1994)

I have benefited from the affirmative action program as an Army officer. However, many in the military do not believe that minorities and women advance on the own merit. The Army must maintain a sufficient number of minority and women officers. Furthermore, the Department of the Army Pamphlet 600-26, Department of the Army Affirmative Action Plan, says the following:

Goals are based on realistic, achievable, and measurable prospects of attainment. Goals are not ceilings, nor are they base figures that are to be reached at the expense or requisite qualifications. In affirmative action efforts, goals are not quotas. (DA PAM 600-26, 1985)

In chapter 5, we discussed the Army promotion system for officers. The research indicated that if there were not enough minorities or women promoted, the board would re-vote the files until the minimum desired number was achieved. I believe the fallacy here is that the Army does not want to condone the actual promotion process.

I recently met a female Army officer. She was recently promoted to the rank of Lieutenant Colonel. She is the only woman remaining in her specialty of the Army in her particular year group. Therefore, if the army did not promote this woman, the existence of a female officer in this branch and year group would have been extinguished at the O-4 (Major) level. Not promoting this woman would depict a obvious disparity of female officers in her year group and specialty. This would be inconsistent with the Department of The Army Pamphlet 600-26:

Review the results of each selection board for obvious disparities affecting minorities and women. Maintain a statistical report of the results of each board using standard Department of Defense race, ethnic and gender categories.

Monitor procedures to ensure significant variances are brought to the attention of each promotion selection board before the board adjourns.

Additionally, not promoting this woman would eliminate all of the officers in this year group and specialty.

Although many suspected that her file wasn't as competitive as her peers, she was still selected was selected for promotion to Lieutenant Colonel where approximately 30 percent of her year group was not selected for promotion.

Is this practice acceptable for affirmative action? Many would argue that it is not. However, the only way to save a dying breed in our society is to ensure they receive early

nurturing in their careers. Although the army accepts a significantly large number of female soldiers in the service, the norms, customs and traditions remain that of the white male. Anyone who wants to rise up the hierarchy must be prepared to conform and live by the established norms and value system. Leaders who generally survive are accepted into the subculture by the peers group that approves them.

Many minorities and women officers are eliminated earlier in their professional career because of the existing value system. Some may decide to pursue other careers where the leaders do not have the high level of authority over their lives and their careers.

Our culture has drawn the line differently at different times. For instance in the 1950s and early 1960s, "Civil Rights" meant rights for African-Americans. "Sex" was added as a joke, in a rider to the Civil Rights Act of 1964, by conservative senators who hoped to defeat the bill with this outlandish addition. The bill passed and gave a legal leg-up to the wave of the women's equity movement that arrived a few years later. (Lester 1994)

In conclusion, the reality is that all Americans are not currently on an even playing field, and we probably never will be. A high school student who receives a college scholarship to attend college must face an even bigger dilemma upon graduating college...employment. Minorities with the highest grades at some of the finest colleges may still face rejection from the job market if they do not have the family background or necessary network.

I believe that the development of affirmative action in 1964 was appropriate for that era. The intent during the period was to pay back minorities and women for the previous wrong-doing that their ancestors suffered years early. The organizations that did not

comply were subject to provide back pay or other benefits as the courts deemed appropriate.

Unfortunately, there is no way to correct the wrong that have occurred in the past, except for learning from the experience. America is a better place as a result of the Civil Rights movement during the 1960s. Eventually, we developed a more diverse workforce and generally employ people on the basis of their potential to serve the organization. Consequently, I believe that the time for affirmative action has come and gone. Most government organizations have an affirmative action plan and are aware of affirmative action programs. However, it is time to develop a more suitable program to serve the needs of everyone in this current era. A program that promotes workforce diversity while ensuring qualified candidates are selected.

However, before we develop this program, we must first develop communities. We must learn to treat each other humanely. We must collectively respect each others heritage. This nation was established on the premise of freedom and equality. *"We hold these truths to be self evident that all men are created equal."*

We should first begin with early nurturing of our children. This will include members of the family and educational system. Providing our children with the knowledge of their own heritage as well as the heritage of the many other Americans in this country. Teaching our children to love each other, rather than hate each other. Teach children to develop friendships, rather than creating enemies.

Secondly, we must create hope for everyone who gets a degree from college and hope that each person can be successful regardless of their family background. Unfortunately, some minorities are reluctant to attend college because of the limited number of

minorities who become successful upon completing college. The workforce should reflect an even playing field for all college graduates to compete. We must establish more appropriate entry level requirements for our young college graduates.

We owe it to ourselves and our country to treat each other equally. Since the beginning of man, we have grouped ourselves in different categories. Over the years, more communities were developed, and groups and cultures were formed. Today, we live in a country with more groups than I can list. However, I believe it's important, as Americans, to recognize that each group has their own individual struggles. We need to integrate each culture and value system into the American culture and value system. This is the first step toward achieving a society free of prejudice and social injustice. We need to recognize that each group has something to offer in our society.

I hope reading this thesis provided a better outlook on affirmative action, and allowed you to look inside your inner self to make more objective opinions regarding affirmative action. I ask you to share this information with your peers, students and family.

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